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# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

COTTONER TRAIL, WED. 1911

No. ~~WED.~~ 447

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FREDERICK A. HYDE AND JOOST H. SCHNEIDER,  
PETITIONERS,

vs.

THE UNITED STATES.

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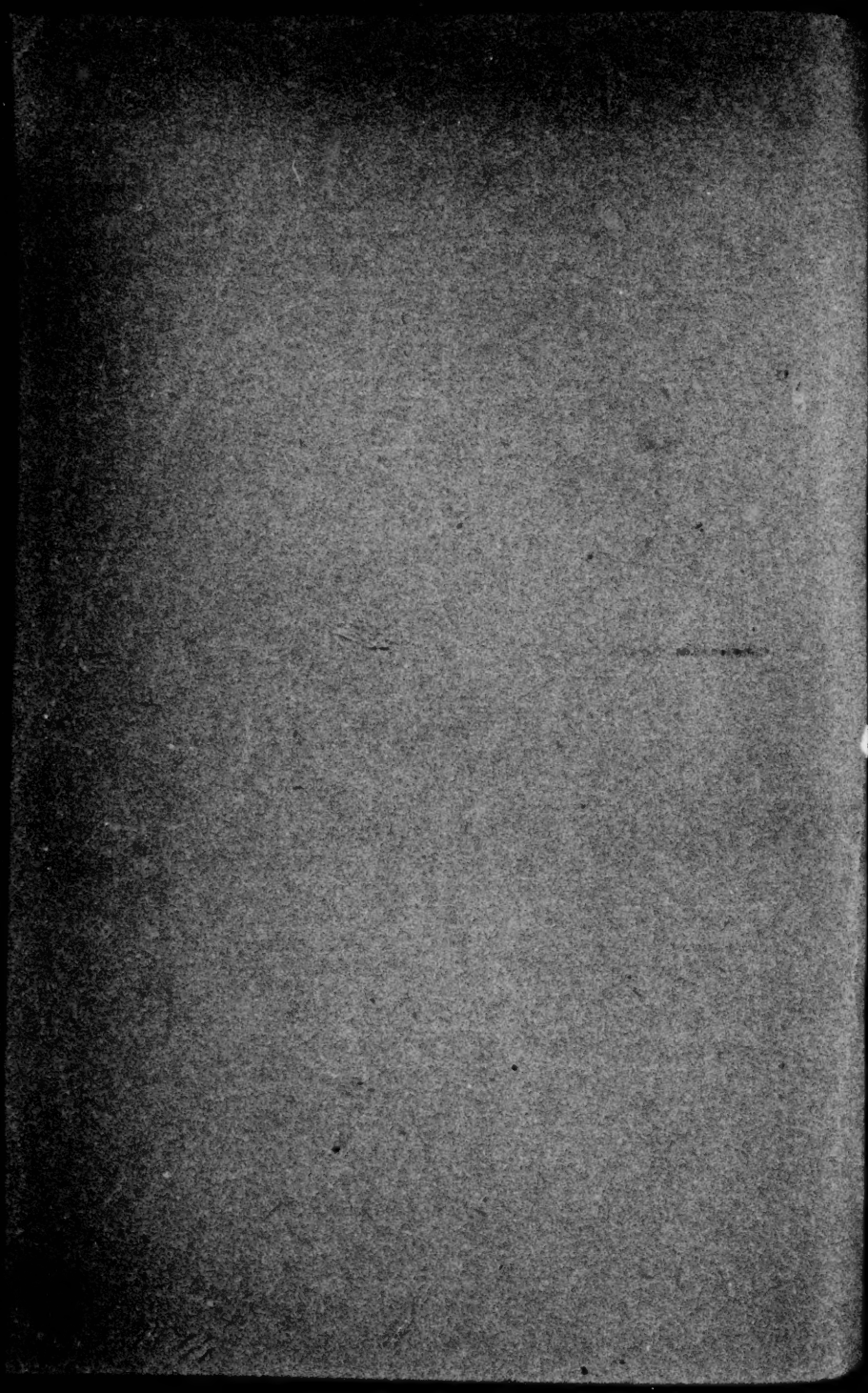
ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF THE DISTRICT OF COLUMBIA.

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OCTOBER TERM, 1910.

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INDEX.

	Original.	Print
Caption .....	a	1
Indictment.....	1	1
Demurrer of Frederick A. Hyde .....	88	94
Order overruling demurrers and requiring defendants to plead.....	90	95
Opinion of Justice Wright.....	91	96
Order allowing special appeal.....	97	99
Mandate of the Court of Appeals.....	98	100
Motion for bill of particulars and affidavit of John A. Benson.....	100	101
Affidavit of defendant Hyde in support of motion for bill of particulars .....	111	106
Order overruling motions of Benson and Hyde to require the Government to elect and granted as to bill of particulars.....	117	109
Bill of particulars.....	119	110
Motion to amend bill of particulars.....	150	134
Orders granting leave to amend bill of particulars and setting case for trial.....	152	135
Amendment to List B of bill of particulars.....	154	136
Plea in abatement of defendant Frederick A. Hyde .....	156	137
Plea in abatement of defendant Joost H. Schneider.....	160	138
Demurrer to pleas in abatement filed by United States.....	163	140

	Original.	Print
Order sustaining demurrer to pleas in abatement.....	164	141
Demurrer of Henry P. Dimond to indictment overruled; pleas of Frederick A. Hyde, Henry P. Dimond, and Joost H. Schneider to indictment and special plea in bar filed by John A. Benson.....	165	141
Order sustaining demurrer to special plea in bar; arraignment of Benson.....	166	142
Motions to summon witnesses for defendants at cost of Government filed.....	166	142
Order of court to impanel jury and summon additional persons; jurors respited and placed in charge of bailiffs.....	167	142
Minute entries showing impanelling and respiting of jurors from day to day.....	168	143
Jury sworn and respited.....	172	145
Verdict; notice of motions for a new trial; jury discharged.....	176	147
Motion for new trial by Frederick A. Hyde.....	177	147
Affidavit of Augustus S. Worthington.....	179	149
Motion in arrest of judgment of Frederick A. Hyde.....	181	149
Motion for new trial by Joost H. Schneider.....	183	150
Affidavit of R. Golden Donaldson.....	185	151
Motion in arrest of judgment of Joost H. Schneider.....	187	152
Order extending time in which to submit and hear motions for new trial and in arrest of judgment and action of court on verdict.....	188	153
Order prolonging term to settle bill of exceptions.....	189	153
Motion by Hyde to examine jurors under oath.....	190	153
Motion by Schneider to examine jurors under oath.....	191	154
Motions for new trial and in arrest of judgment argued and submitted and term further prolonged to settle and sign bill of exceptions.....	192	155
Opinion of Justice Stafford.....	193	155
Order overruling motions for new trial and for leave to examine jurors under oath; exception noted.....	198	158
Order overruling motions in arrest of judgment.....	199	158
Sentences.....	200	159
Appeals noted.....	201	159
Bond of Frederick A. Hyde for appeal to Court of Appeals.....	202	160
Bond of Joost H. Schneider for appeal to Court of Appeals.....	203	160
Time extended from time to time to submit bill of exceptions and file transcript in Court of Appeals.....	205	162
Order making bill of exceptions part of record.....	205	162
Bill of exceptions.....	206	162
Witnesses for the United States.....	208	163
Testimony of Ithmar P. Berthrong.....	208	163
Direct examination.....	208	163
Testimony of John H. Fimple.....	219	169
Direct examination.....	219	169
Exhibit 13—Order of General Land Office.....	225	172
Cross-examination.....	225	177
Testimony of John McPhaul.....	243	181
Direct examination.....	243	181
Cross-examination.....	250	185
Redirect examination.....	252	186
Testimony of Walter K. Slack.....	253	186
Direct examination.....	253	186

# INDEX.

III

	Original.	Print
Exhibit No. 93—Letter, Hyde to Dimond, Jan. 15, 1903	264	192
94—Letter, Hyde to Dimond, Jan. 16, 1903	266	193
95—Letter, Hyde to Dimond, Jan. 20, 1903	272	196
406—Letter, Hyde to Dimond, Jan. 19, 1903	275	197
Testimony of Marion L. Doyle.....	278	199
Direct examination.....	278	199
Exhibit No. 99—Appointment of agent by Elizabeth Dimond.....	289	205
Exhibit No. 100—Power of attorney by Elizabeth Dimond.....	290	205
Cross-examination.....	292	206
“Ex. Doyle Cross Ex. No. 1”—Agreement between Hyde and Benson.....	296	208
Redirect examination.....	299	210
Recross-examination.....	300	210
Testimony of Marion L. Doyle (recalled).....	300	210
Direct examination.....	300	210
Cross-examination.....	300	210
Redirect examination.....	304	212
Recross-examination.....	305	213
Testimony of Miss Isabella Kincaid.....	306	213
Direct examination.....	306	213
Cross-examination.....	312	216
Redirect examination.....	314	217
Testimony of Miss Isabella Kincaid (recalled).....	314	218
Cross-examination.....	314	218
Redirect examination.....	318	220
Testimony of Charles A. Johnson.....	319	220
Direct examination.....	319	220
Application to purchase State lands.....	321	221
Cross-examination.....	326	224
Testimony of William F. J. Lahl.....	329	225
Direct examination.....	329	225
Cross-examination.....	330	226
Testimony of George G. Brown.....	331	226
Direct examination.....	331	226
Cross-examination.....	335	228
Redirect examination.....	337	229
Recross-examination.....	337	229
Testimony of Thomas McCusker.....	337	229
Direct examination.....	337	229
Exhibit 103—Proceedings.....	341	231
Application to purchase.....	344	233
Cross-examination.....	353	237
Redirect examination.....	358	240
Testimony of Don Alexander.....	358	240
Direct examination.....	358	240
Application to purchase.....	362	242
Cross-examination.....	370	245
Redirect examination.....	375	248
Recross-examination.....	376	248

	Original.	Print.
Testimony of Mrs. Belle A. Curtiss.....	376	249
Direct examination.....	376	249
Cross-examination.....	387	254
Exhibit 191—Application No. 2379, &c.....	394	258
Redirect examination.....	407	265
Testimony of George W. Davis.....	408	265
Direct examination.....	408	265
Cross-examination.....	411	267
Testimony of Benjamin F. Allen.....	418	270
Direct examination.....	418	270
Exhibit 138—Letter, Hyde to Allen, Jan. 29, 1899.	420	271
196—Letter, Allen to Commissioner, Feb. 10, 1899.....	422	272
148—Letter, Hyde to Allen, March 31, 1899.....	429	276
167—Letter, Hyde to Allen, Oct. 20, 1899.	430	277
142—Letter, Hyde to Allen, Feb. 21, 1899.	432	278
144—Letter, Hyde to Allen, March 10, 1899.....	433	278
145—Letter, Hyde to Allen, March 22, 1899.....	434	279
147—Letter, Hyde to Allen, March 27, 1899.....	435	279
149—Letter, Hyde to Allen, April 14, 1899.	436	280
193—Letter, Allen to Commissioner, March 6, 1899.....	437	281
348—Letter, Allen to Commissioner, May 4, 1899.....	442	284
349—Letter, Commissioner to Allen, April 28, 1899.....	443	284
No. 350—Letter, Commissioner to Taggart, April 28, 1899.....	444	285
§ 150—Letter, Hyde to Allen, May 8, 1899..	448	287
151—Letter, Hyde to Allen, May 12, 1899.	449	287
152—Letter, Hyde to Allen, May 23, 1899.	450	288
§ 155—Letter, Hyde to Allen, June 13, 1899.	450	288
158—Letter, Hyde to Allen, July 10, 1899.	452	289
164—Letter, Hyde to Allen, August 11, 1899.....	453	289
No. 373—Proposed Cinnabar Springs and Mt. Sterling Reservation.....	454	290
No. 374—Warner Mt. and Goose Lake Reserve.	456	291
No. 375—Mt. Shuster Reserve.....	456	291
No. 376—Diamond Mt. Reserve.....	457	292
No. 153—Letter, Hyde to Allen, May 26, 1899.	458	292
No. 154—Letter, Hyde to Allen, June 3, 1899.	460	293
156—Letter, Hyde to Allen, June 16, 1899.	461	294
157—Letter, Hyde to Allen, June 30, 1899.	462	294
159—Letter, Hyde to Allen, July 18, 1899.	462	295
160—Letter, Hyde to Allen, July 22, 1899.	463	295
161—Letter, Hyde to Allen, July 27, 1899.	464	295



	Original.	Print
Exhibit No. 369—Letter, Allen to Commissioner, August 31, 1899.....	466	296
146—Letter, Hyde to Allen, Mar. 27, 1899.....	470	299
179—Letter, Hyde to Allen, June 29, 1900.....	471	299
183—Letter, Hyde to Allen, Feb. 20, 1902.....	472	299
184—Letter, Hyde to Allen, Mar. 1, 1902.....	473	300
189—Letter, Hyde to Allen, Feb. 4, 1902.....	474	300
Cross-examination.....	475	301
Redirect examination.....	489	308
Recross-examination.....	494	310
Redirect examination.....	495	311
Testimony of Grant I. Taggart.....	495	311
Direct examination.....	495	311
Cross-examination.....	500	314
Redirect examination.....	505	314
Recross-examination.....	505	316
Redirect examination.....	506	316
Testimony of E. P. McCornack.....	507	318
Direct examination.....	507	318
Cross-examination.....	515	322
Redirect examination.....	518	323
Exhibit No. 229—Letter, Hyde to McCornack, December 10, 1897.....	518	323
No. 236—Letter, Hyde to McCornack, February 23, 1899.....	519	324
No. 282—Letter, Hyde to McCornack, June 1, 1899.....	520	324
No. 284—Letter, Hyde to McCornack, July 23, 1901.....	521	325
No. 204—Letter, Hyde to McCornack, March 10, 1902.....	522	325
No. 205—Letter, Hyde to McCornack, March 11, 1902.....	523	326
208—Letter, Chamberlin to McCornack, April 2, 1902.....	524	326
No. 209—Letter, Chamberlin to McCornack, April 17, 1902.....	525	327
No. 210—Letter to Hyde, April 25, 1902.....	526	327
No. 211—Letter, Hyde to McCornack, April 25, 1902.....	526	327
No. 213—Letter to Hyde, April 30, 1902.....	527	328
No. 217—Letter to Hyde, June 3, 1902.....	528	328
No. 218—Letter, Hyde to McCornack, June 5, 1902.....	528	329
Testimony of Oswald West.....	529	329
Direct examination.....	529	329
Cross-examination.....	530	330
Redirect examination.....	533	331
Testimony of Woodford D. Harlan.....	534	331
Direct examination.....	534	331
Exhibit No. 351—Letter, Holsinger to Commissioner, November 12, 1902.....	543	336
Cross-examination.....	553	341

	Original.	Print
Direct examination (continued).....	555	342
Cross-examination (continued).....	555	342
Direct examination (continued).....	555	342
Cross-examination.....	563	346
Redirect examination.....	585	357
Recross-examination.....	586	357
Testimony of William E. Valk.....	586	357
Direct examination.....	586	357
Exhibit No. 96—Slips.....	592	361
No. 97—Slips.....	593	361
No. 98—Slips.....	593	361
Cross-examination.....	600	365
Redirect examination.....	609	370
Recross-examination.....	610	370
Testimony of Walter K. Slack (recalled).....	611	370
Cross-examination.....	611	370
Testimony of Clarence W. Hodson.....	612	371
Direct examination.....	612	371
Cross-examination.....	615	372
Redirect examination.....	617	374
Recross-examination.....	618	374
Testimony of William J. Burns.....	619	374
Direct examination.....	619	374
Exhibit No. 353—Letter, Zabriskie to Commissioner..	625	378
No. 28—Letter, Schneider to Commissioner..	627	379
No. 29—Letter, Schneider to Commissioner..	628	379
No. 387—Letter, Dimond to Hyde.....	629	380
Cross-examination.....	636	383
Testimony of J. Knox Corbett.....	640	385
Direct examination.....	640	385
Cross-examination.....	645	387
Redirect examination.....	649	390
Testimony of William J. Burns (recalled).....	650	390
Cross-examination.....	650	390
Testimony of S. J. Holsinger.....	650	390
Direct examination.....	650	390
Cross-examination.....	660	395
Testimony of Louis Saloman.....	669	400
Direct examination.....	669	400
Testimony of G. J. Hartmann, Jr.....	672	401
Direct examination.....	672	401
Cross-examination.....	673	402
Testimony of B. W. Cody.....	674	402
Direct examination.....	674	402
Cross-examination.....	675	403
Testimony of A. W. Schmale.....	676	403
Direct examination.....	676	403
Cross-examination.....	677	404
Testimony of Joseph B. Frontaine.....	678	405
Direct examination.....	678	405
Cross-examination.....	683	407

	Original.	Print
Testimony of J. J. De Lury.....	686	408
Direct examination.....	686	408
Cross-examination.....	688	409
Redirect examination.....	689	410
Recross-examination.....	689	410
Testimony of Milton York.....	689	410
Direct examination.....	689	410
Cross-examination.....	690	411
Testimony of Mina Boskowitz.....	691	412
Direct examination.....	691	412
Cross-examination.....	693	412
Redirect examination.....	694	413
Recross-examination.....	694	413
Testimony of Edward Long.....	694	413
Direct examination.....	694	413
Cross-examination.....	696	414
Testimony of Louis E. Judson.....	697	415
Direct examination.....	697	415
Cross-examination.....	698	415
Redirect examination.....	699	416
Testimony of V. P. Conklin.....	699	416
Direct examination.....	699	416
Cross-examination.....	700	416
Testimony of R. P. Sibley.....	700	416
Direct examination.....	700	416
Cross-examination.....	702	417
Testimony of Mrs. Lillian York.....	703	418
Direct examination.....	703	418
Cross-examination.....	704	418
Testimony of Fred Wittenstraum.....	704	418
Direct examination.....	704	418
Cross-examination.....	705	419
Redirect examination.....	705	419
Recross-examination.....	706	419
Testimony of E. E. Page.....	706	419
Direct examination.....	706	419
Cross-examination.....	707	419
Redirect examination.....	709	421
Testimony of Clarence H. Ford.....	709	421
Direct examination.....	709	421
Cross-examination.....	710	422
Testimony of Edward L. Aiken.....	711	422
Direct examination.....	711	422
Cross-examination.....	712	422
Testimony of H. F. Bartels.....	712	422
Direct examination.....	712	422
Cross-examination.....	713	423
Testimony of D. D. Tennyson.....	714	424
Direct examination.....	714	424
Cross-examination.....	724	428
Redirect examination.....	729	431
Recross-examination.....	732	432

	Original.	Print
Testimony of Paul L. Moses.....	733	433
Direct examination.....	733	433
Cross-examination.....	736	434
Redirect examination.....	738	435
Further cross-examination.....	738	435
Further redirect examination.....	738	436
Testimony of Abraham J. Stein.....	739	436
Direct examination.....	739	436
Cross-examination.....	741	437
Redirect examination.....	743	438
Testimony of D. J. Cullen.....	743	438
Direct examination.....	743	438
Cross-examination.....	744	438
Redirect examination.....	746	440
Testimony of Joseph Dixon.....	746	440
Direct examination.....	746	440
Cross-examination.....	749	441
Testimony of George J. Knox.....	750	442
Direct examination.....	750	442
Exhibit No. 407—Certificate of Surveyor General.....	751	442
408—Form of oath.....	752	443
Cross-examination.....	753	443
Redirect examination.....	755	444
Recross-examination.....	756	445
Testimony of George J. Knox (recalled).....	756	445
Direct examination.....	756	445
Cross-examination.....	757	445
Testimony of Jeremiah L. Donovan.....	758	446
Direct examination.....	758	446
Cross-examination.....	760	447
Redirect examination.....	762	448
Testimony of James Mason.....	763	448
Direct examination.....	763	448
Cross-examination.....	764	449
Redirect examination.....	765	450
Recross-examination.....	767	451
Redirect examination.....	768	451
Testimony of Otto T. Zinns.....	769	451
Direct examination.....	769	451
Power of attorney.....	770	452
Cross-examination.....	771	452
Testimony of Charles A. Murdock.....	774	454
Direct examination.....	774	454
Cross-examination.....	776	455
Redirect examination.....	777	455
Testimony of Daniel W. McDonald.....	778	456
Direct examination.....	778	456
Cross-examination.....	780	457
Redirect examination.....	781	457
Recross-examination.....	781	457
Testimony of James V. Scott.....	782	458
Direct examination.....	782	458
Cross-examination.....	785	459

# INDEX.

IX

	Original.	Print
Redirect examination .....	787	460
Recross-examination .....	787	460
Testimony of John McPhaul (recalled).....	787	461
Direct examination.....	787	461
Selection, application No. 1153.....	788	461
Appeal of C. W. Clarke from decision of Commissioner of General Land Office.....	794	461
Testimony of Horace Stevens.....	799	466
Direct examination.....	799	466
Cross-examination .....	801	468
Testimony of A. Dean.....	801	468
Direct examination.....	801	468
Cross-examination .....	804	469
Redirect examination.....	806	470
Recross-examination .....	807	471
Testimony of Charles P. Lyndall.....	807	471
Direct examination.....	807	471
Assignment in application No. 6603.....	810	472
Application to purchase State lands.....	813	474
Application No. 6603.....	816	474
Affidavit of character of State lands.....	816	476
Approval of application to purchase State lands.....	819	477
Certificate of purchase.....	820	478
Cross-examination .....	824	480
Testimony of Edward E. Garrett.....	827	482
Direct examination.....	827	482
Cross-examination.....	829	482
Redirect examination .....	830	483
Testimony of Thomas S. Burnes.....	832	484
Direct examination.....	832	484
Cross-examination.....	838	498
Redirect examination.....	864	501
Recross-examination .....	870	504
Testimony of Henry P. Tricou.....	873	505
Direct examination.....	873	505
Exhibit No. 26—Release deed of Elizabeth Dimond.....	876	507
No. 413—Release deed of Jennie P. Blair .....	878	508
Cross-examination.....	881	510
Testimony of Moses Greenblatt.....	882	511
Direct examination.....	882	511
Cross-examination.....	886	512
Redirect examination .....	893	517
Recross-examination .....	895	517
Testimony of Margaret Andrews.....	896	518
Direct examination.....	896	518
Cross-examination .....	897	518
Testimony of Cora D. Trowbridge.....	897	519
Direct examination.....	897	519
Testimony of Joe A. Brown.....	898	519
Direct examination.....	898	519
Cross-examination .....	901	521
Testimony of Walter K. Slack (recalled).....	902	521
Direct examination.....	902	521



	Original.	Print
Exhibit No. 85—Letter, Hyde to Dimond.....	903	522
No. 84—Letter, Hyde to Dimond.....	905	523
No. 90—Letter, Dimond to Hyde.....	907	524
No. 86—Letter, Hyde to Dimond.....	908	525
No. 83—Letter, Hyde to Dimond.....	908	525
No. 91—Letter, Hyde to Dimond.....	909	526
No. 87—Letter, Hyde to Dimond.....	912	527
No. 88—Letter of Hyde, January 13, 1902.....	914	528
No. 89—Letter, Hyde to Dimond.....	914	528
No. 82—Letter, Hyde to Dimond.....	915	529
No. 69—Letter, Hyde to Dimond.....	916	530
No. 70—Letter, Hyde to Dimond.....	917	530
No. 71—Letter, Hyde to Dimond.....	919	531
No. 72—Letter, Hyde to Dimond.....	921	532
No. 73—Letter, Hyde to Dimond.....	922	533
No. 74—Letter, Hyde to Dimond.....	923	533
No. 75—Letter, Hyde to Dimond.....	924	534
No. 78—Letter, Hyde to Dimond.....	925	535
Nos. 79 and 80—Letter, Hyde to Dimond.....	926	535
No. 68—Letter, Hyde to Dimond.....	926	535
No. 67—Letter, Hyde to Dimond.....	928	536
No. 77—Letter, Benson to Dimond.....	929	537
418—Letter, Benson to Dimond.....	932	539
419—Letter, Hyde to Dimond.....	937	541
421—Letter, Benson to Dimond.....	938	542
425—Letter, Benson to Dimond.....	939	542
No. 430—Letter, Benson to Dimond.....	940	543
No. 31—Letter, Hyde to Dimond.....	941	544
Testimony of Walter K. Slack (recalled).....	943	545
Direct examination.....	943	545
Exhibit 414—Release deed of Elizabeth Dimond.....	944	545
468—Letter, Hyde to Commissioner.....	946	546
Testimony of Mrs. Rebecca L. Newman.....	948	547
Direct examination.....	948	547
Cross-examination.....	949	548
Redirect examination.....	950	548
Recross-examination.....	950	548
Testimony of Mrs. Tillie A. Fleischauer.....	951	549
Direct examination.....	951	549
Cross examination.....	968	558
Redirect examination.....	969	558
Testimony of Mrs. Nellie I. Dutton.....	970	559
Direct examination.....	970	559
Cross-examination.....	972	560
Redirect examination.....	975	562
Testimony of Annie King Dutton.....	976	562
Direct examination.....	976	562
Cross-examination.....	977	563
Testimony of George De Lury.....	978	563
Direct examination.....	978	563
Cross-examination.....	979	564
Testimony of George De Lury (recalled).....	980	564
Direct examination.....	980	564

	Original.	Print
Testimony of Flora Liebes.....	980	564
Direct examination.....	980	564
Cross-examination.....	981	565
Recross-examination.....	982	565
Testimony of Joseph Webber.....	982	565
Direct examination.....	982	565
Cross-examination.....	984	567
Testimony of Mrs. Helena Liebes.....	985	567
Direct examination.....	985	567
Testimony of Harry Weber.....	986	567
Direct examination.....	986	567
Cross-examination.....	986	568
Redirect examination.....	987	568
Testimony of Gustave Marcus.....	987	568
Direct examination.....	987	568
Testimony of Isaac Liebes.....	990	570
Direct examination.....	990	570
Cross-examination.....	994	572
Redirect examination.....	996	573
Recross-examination.....	996	573
Testimony of Marcus Hart.....	997	573
Direct examination.....	997	573
Cross-examination.....	1001	576
Redirect examination.....	1002	576
Testimony of Joseph Weinberger.....	1004	578
Direct examination.....	1004	578
Cross-examination.....	1007	578
Redirect examination.....	1008	579
Testimony of Rosalie Weinberger.....	1008	580
Direct examination.....	1008	580
Testimony of Henry Randolph.....	1009	580
Direct examination.....	1009	580
Cross-examination.....	1010	581
Redirect examination.....	1011	581
Recross-examination.....	1012	581
Testimony of W. S. Kingsbury.....	1013	582
Direct examination.....	1013	582
Cross-examination.....	1015	584
Redirect examination.....	1019	586
Recross-examination.....	1020	587
Testimony of W. S. Kingsbury (recalled).....	1022	587
Direct examination.....	1022	587
Cross-examination.....	1022	588
Testimony of Walter K. Slack (recalled).....	1026	590
Direct examination.....	1026	590
Exhibit No. 26—Application to purchase lands.....	1033	594
Cross-examination.....	1040	597
Recross-examination.....	1052	603
Testimony of Walter K. Slack (recalled).....	1057	606
Direct examination.....	1057	606
Cross-examination.....	1059	607

	Original.	Print
Testimony of Joseph Naphly.....	1064	610
Direct examination.....	1064	610
Cross-examination.....	1066	611
Testimony of Edwin Rittenhouse.....	1068	612
Direct examination.....	1068	612
Testimony of John F. Shearman.....	1069	612
Direct examination.....	1069	612
Exhibit No. 391—Letter, "Truth" to "Mr. Secretary".....	1071	614
No. 393—Letter to "Mr. Secretary".....	1073	615
No. 399—Letter, "Truth" to "W. J. B.".....	1075	616
No. 395—Letter to "Mr. D.".....	1078	617
No. 396—Anonymous note.....	1079	618
No. 397—Anonymous note.....	1079	618
No. 398—Anonymous note.....	1080	618
No. 401—Anonymous note, signed "Truth".....	1080	618
No. 403—Anonymous note.....	1081	619
No. 405—Anonymous letter to Dimond.....	1082	620
Government Exhibit No. 469—Letter, Dimond to Browne.....	1084	621
No. 470—Letter, Dimond to Browne.....	1085	622
No. 476—Letter, Dimond to Britton & Gray... ..	1086	622
No. 479—Letter, Dimond to Browne.....	1087	623
No. 482—Letter, Dimond to Browne.....	1088	623
Cross-examination.....	1099	630
Redirect examination.....	1102	631
Recross-examination.....	1104	632
Testimony of Charles A. Bump.....	1106	633
Direct examination.....	1106	633
Cross-examination.....	1107	634
Testimony of Henry E. O'Neill.....	1116	638
Direct examination.....	1116	638
Testimony of Bruce L. Dray.....	1117	639
Direct examination.....	1117	639
Cross-examination.....	1117	639
Testimony of Lewis E. Aubury.....	1118	639
Direct examination.....	1118	639
Testimony of Louis F. Geisler.....	1124	643
Direct examination.....	1124	643
Cross-examination.....	1126	644
Testimony of William Oliver Randolph.....	1128	645
Direct examination.....	1128	645
Cross-examination.....	1130	646
Testimony of Thomas H. Reynolds.....	1130	646
Direct examination.....	1130	646
Testimony of Rudyard I. Smith.....	1131	647
Direct examination.....	1131	647
Testimony David S. Stearns.....	1132	647
Direct examination.....	1132	647

	Original.	Print
Testimony of John McPhaul (recalled).....	1133	647
Direct examination.....	1133	647
Selection application .....	1135	649
Letter of December 30, 1901, from attorney for C. W. Clarke to Hon. Binger Hermann.....	1138	650
Selections of State and school lands .....	1142	652
Exhibit No. 61—S. E. Keifer appointed Hyde's agent, &c.....	1153	659
Letter of March 31, 1902, from Henry P. Dimond to Hon. Binger Hermann .....	1154	660
Letter of March 3, 1902, from Binger Hermann to Reg- ister and Receiver, Sacramento, California.....	1155	660
Exhibit 531—Affidavit of Joost H. Schneider.....	1160	663
No 532—Affidavit of Joost H. Schneider.....	1163	664
Cross-examination.....	1165	665
Testimony of R. E. Valk (recalled).....	1166	666
Cross-examination.....	1166	666
Testimony of Woodford D. Harlan (recalled).....	1167	666
Direct examination.....	1167	666
Cross-examination .....	1168	666
Testimony of Louise E. Aubry (recalled).....	1169	667
Cross-examination .....	1169	667
Testimony of W. K. Slack (recalled).....	1169	667
Direct examination.....	1169	667
Testimony of A. B. Pugh.....	1170	668
Direct examination.....	1170	668
Exhibit 533—Letter, Dimond to Pugh.....	1171	668
534—Letter, Pugh to Dimond.....	1171	668
535—Letter, Dimond to Pugh.....	1172	669
Testimony of W. S. Kingsbury (recalled).....	1173	669
Cross-examination.....	1173	669
Motion by counsel for defendants to strike certain evidence from consideration by the jury.....	1173	669
Motion overruled .....	1175	670
Motion to instruct jury to find a verdict in favor of defendants.	1175	670
Motion to instruct jury overruled.....	1176	671
Decision of court overruling motions.....	1176	671
Evidence on behalf of the defendants.....	1186	675
Testimony of Philip M. Lilienthal .....	1186	675
Direct examination.....	1186	675
Cross-examination.....	1187	676
Testimony of Henry Hewitt .....	1187	676
Direct examination.....	1187	676
Cross-examination.....	1189	677
Testimony of John D. Ackerman .....	1190	678
Direct examination.....	1190	678
Cross-examination.....	1198	682
Redirect examination .....	1202	684
Testimony of Ralph Van Gundy .....	1206	686
Direct examination.....	1206	686
Cross-examination.....	1210	688
Redirect examination .....	1211	688

	Original.	Print
Testimony of James H. Lavenson.....	1211	688
Direct examination.....	1211	688
Redirect examination.....	1224	695
Cross-examination.....	1224	695
Redirect examination.....	1228	697
Testimony of James H. Lavenson (recalled).....	1229	697
Direct examination.....	1229	697
Cross-examination.....	1229	698
Testimony of Miss Clara E. Glover.....	1229	698
Direct examination.....	1229	698
Cross-examination.....	1235	701
Testimony of Herbert L. Clarke.....	1237	702
Direct examination.....	1237	702
Cross-examination.....	1250	708
Testimony of Herbert L. Clarke (recalled).....	1251	709
Direct examination.....	1251	709
Cross-examination.....	1261	714
Redirect examination.....	1266	716
Recross-examination.....	1266	717
Re-redirect examination.....	1267	717
Re-recross-examination.....	1267	717
Testimony of John McPhaul (recalled).....	1267	717
Direct examination.....	1267	717
Testimony of John A. Benson.....	1269	718
Direct examination.....	1269	718
Cross-examination.....	1282	725
Testimony of John A. Benson (resuming).....	1286	727
Cross-examination.....	1286	727
Redirect examination.....	1300	734
Recross-examination.....	1308	738
Testimony of Charles A. Keigwin.....	1310	739
Direct examination.....	1310	739
Cross-examination.....	1312	740
Testimony of W. S. Kingsbury (recalled).....	1312	740
Direct examination.....	1312	740
Cross-examination.....	1313	741
Redirect examination.....	1315	742
Testimony of Joost H. Schneider.....	1318	743
Direct examination.....	1318	743
Cross-examination.....	1342	755
Schneider Cross-Exhibit No. 1—Selection of lands by Hyde.....	1358	763
Redirect examination.....	1365	766
Envelopes (marked 2 and 3) addressed to J. P. Jones, Fuerte, Mexico.....	1372	770
Testimony of D. W. Baker.....	1373	770
Direct examination.....	1373	770
Testimony of A. B. Pugh (recalled).....	1373	770
Direct examination.....	1373	770
Testimony of Henry P. Dimond.....	1375	771
Direct examination.....	1375	771
U. S. Exhibit No. 105—Letter, Browne to Hyde.....	1385	777
Cross-examination.....	1402	785



	Original.	Print
Redirect examination .....	1421	794
Recross-examination .....	1425	796
Testimony of Woodford D. Harlan .....	1426	797
Direct examination .....	1426	797
Testimony of William E. Valk .....	1427	797
Direct examination .....	1427	797
Testimony of Thomas G. Gerdine .....	1427	797
Direct examination .....	1427	797
Cross-examination .....	1428	797
Testimony of Joseph G. Campbell .....	1428	798
Direct examination .....	1428	798
Testimony of Henry P. Dimond (recalled) .....	1428	798
Direct examination .....	1428	798
Telegram from F. A. Hyde to Britton & Gray, dated December 9, 1902 .....	1429	798
Telegram from F. A. Hyde to Britton & Gray, dated December 9, 1902 .....	1430	798
Telegram from Britton & Gray to F. A. Hyde, dated December 10, 1902 .....	1430	799
Telegram from Britton & Gray to F. A. Hyde, dated December 10, 1902 .....	1431	799
Testimony of C. M. Dalzell .....	1432	799
Direct examination .....	1432	799
Instructions to jury asked on behalf of the defendants .....	1433	800
Opening argument for the Government to the jury by Mr. Arthur B. Pugh .....	1449	808
Argument of Mr. A. A. Birney for defendant Benson .....	1452	810
Argument of Mr. A. S. Worthington, of counsel for defendant Hyde .....	1456	812
Charge of court to the jury .....	1458	813
Directions to clerk for preparation of transcript of record .....	1542	876
Additional designation of record .....	1545	878
Affidavit of Daniel W. Baker in opposition to motion for bill of par- ticulars .....	1546	878
Clerk's certificate .....	1556	863
<b>Minute entries of argument</b> .....	865	865
<b>Opinion</b> .....	866	865
<b>Judgment</b> .....	876	884
<b>Clerk's certificate</b> .....	877	884

*Wait of Certiorari return*

875



# In the Court of Appeals of the District of Columbia.

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N. 2097.

FREDERICK A. HYDE et al., Appellants,  
vs.  
UNITED STATES OF AMERICA.

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*a* Supreme Court of the District of Columbia.

Criminal. No. 24141.

UNITED STATES  
vs.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND, and  
JOOST H. SCHNEIDER.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 In the Supreme Court of the District of Columbia, Holding a  
Criminal Court.

Of the January Term, in the Year of Our Lord Nineteen Hundred  
and Four.

DISTRICT OF COLUMBIA, *set:*

The grand jurors for the United States of America, inquiring for the District of Columbia, upon their oath present, that on the twenty-fourth day of October, in the year of our Lord nineteen hundred and one, and from thence until the first day of February, in the year of our Lord nineteen hundred and four, Frederick A. Hyde and John A. Benson were engaged, at the city of San Francisco, in the state of California, for their own profit, gain, use and benefit respectively, in the business of obtaining from the said United States and appropriating, in the manner hereinafter set forth, the possession and use of and title to public lands of the said United States outside of forest reserves established under the laws of the said United

States, in exchange for and in lieu of lands lying within such forest reserves and known as school lands, by them the said Frederick A. Hyde and John A. Benson obtained from the states of California and Oregon in the manner hereinafter set forth; that Henry P. Dimond was, during the said period, an employee, agent and attorney for hire of the said Frederick A. Hyde and John A. Benson in the matter of their said business; that Joost H. Schneider was, during the said period, an agent and employee for hire of the said Frederick A. Hyde and John A. Benson in the matter of their said business; that Woodford D. Harlan and William E. Valk were, before and during the said period, employees of the said United States holding official positions in the General Land Office of the said United States at the city of Washington, in the said District of Columbia, and as such employees were paid fixed salaries respectively and were respectively charged with duties pertaining to the disposal of the public lands of the said United States, and especially to the exchanging of such public lands, lying outside of forest reserves established, under the laws of the said United States in that behalf, and open to selection under the said laws, in exchange for and in lieu of lands within such forest reserves; that Benjamin F. Allen was, before and during the said period, an employee of the said United States in the public-land service, that is to say, a forest superintendent; and that Grant I. Taggart was, before and during the same period, an employee of the said United States in the said public-land service, that is to say, a forest supervisor.

2 And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, during the period aforesaid, to wit, on the thirtieth day of December, in the year of our Lord nineteen hundred and one, at Washington aforesaid, in the said District of Columbia, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the said grand jurors unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of, and the title to, divers large tracts of the public lands of the said United States open and to be open to selection, under the laws of the said United States in that behalf, in lieu of lands included and to be included within the limits of forest reserves, established and to be established as aforesaid in the said states of California and Oregon, by obtaining, for the profit, gain, use and benefit of themselves, as in this count of this indictment hereafter set forth, from the said United States, and appropriating, such possession, use and title, in pursuance and by means of a false and fraudulent practice whereby the said Frederick A. Hyde and John A. Benson were to obtain fraudulently from the said states of California and Oregon title to and possession of school lands lying within the limits of such forest reserves and open to purchase from those states, by residents thereof respectively, (being citizens of the said United States or persons having declared their intention to become such,) under the laws thereof respectively, in quantities not exceeding, for each of such residents, six hundred and forty acres in the said state of California and three hundred and twenty acres in the said state of Oregon, upon ap-

plication being made to the proper authorities of the said states respectively, by any such resident, supported by his affidavit, showing his qualifications to make such purchase, and, amongst other things (as before and during the said period was required by the laws of the said states), his intention to purchase such lands in good faith and for his own benefit, and that he has made no contract or agreement to sell the same,—which said school lands were to be so obtained from the said states by making and filing with the said authorities applications for the purchase of the same, and assignments of the same, and of the certificates of purchase thereof, in the names of fictitious persons, and in the names of persons not really desiring, and not qualified, to purchase the same, (the use of which last-mentioned names for such purposes the said Frederick A. Hyde and John A. Benson would procure by paying and causing to be paid to such persons respectively small sums of money, and by falsely representing and causing to be represented to some of such persons that they were merely disposing of their respective rights to purchase such school lands).—and by supporting such applications with forged and fraudulent affidavits and affidavits false, and known to the said Frederick A. Hyde and John A. Benson to be false, in this, that they would purport to be, some the affidavits of real persons, and others the *bona-fide* sworn affidavits of the persons whose names were signed thereto, whereas in truth and in fact the former would be the affidavits of fictitious persons and would not be the affidavits of real persons or affidavits sworn to by any person, and the latter would not be the *bona-fide*

3 or sworn affidavits of the persons whose names were signed thereto, because such latter affidavits would not only state that the affiants therein were persons qualified under the laws of the said state of California, or of the said state of Oregon, as the case might be, to make such applications and to purchase such lands, by reason, amongst other things, of their intending to purchase the same in good faith and for their own benefit respectively, and of their having made no contract or agreement to sell the same, while in truth and in fact none of such real persons would intend to purchase such lands in good faith for his own use or benefit at all, but would be either knowingly aiding and assisting the said Frederick A. Hyde and John A. Benson in their said fraudulent practice or innocently acting upon their said false representations, but because, also, the said latter affidavits would not in truth and in fact have ever been sworn to at all by any of the persons whose names were signed thereto; and whereby the said Frederick A. Hyde and John A. Benson were to cause to be relinquished, assigned, transferred and conveyed, by means of false and forged relinquishments, assignments and conveyances, to the said United States, either directly, or indirectly either through the said Frederick A. Hyde, or through divers agents and attorneys of the said Frederick A. Hyde and John A. Benson, to wit, Crawford W. Clarke, A. S. Baldwin, Isaac Liebes, Elizabeth Dimond, and others whose names are to the said grand jurors unknown, as would be found convenient or necessary, the pretended rights of such fictitious persons respectively, and require and procure such real persons to make relinquishments, assignments, transfers and conveyances, either directly, or indirectly



through the said Frederick A. Hyde, or through the said agents and attorneys of the said Frederick A. Hyde and John A. Benson, as would be found convenient or necessary, to the said United States, of the titles to and possession of such school lands so by the use of the names of such real persons fraudulently to be obtained from the said states, and this, in either case, in exchange as aforesaid for public lands to be selected, and for titles thereto by patent to be obtained, by and on behalf of the said Frederick A. Hyde and John A. Benson in the names of such fictitious or real persons, or in the names of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) Crawford W. Clarke, (under the designation of C. W. Clarke,) A. S. Baldwin, or Isaac Liebes, or under the name of Elizabeth Dimond, or of F. A. Hyde & Co., as would be found convenient or necessary, from the public lands of the said United States, in lieu of such school lands lying within the limits of such forest reserves as aforesaid; and whereby the said Frederick A. Hyde and John A. Benson were in like manner to exchange such school lands already, before the said period, obtained by them from the said states in the same fraudulent manner, for public lands of the said United States lying outside of the limits of forest reserves and open to selection as aforesaid, and for titles by patent thereto as aforesaid,—they the said Frederick A. Hyde and John A. Benson, when so as aforesaid causing to be relinquished, assigned, transferred and conveyed to the said United States the titles to and exchanging the school lands, so by

4 either of the methods aforesaid fraudulently obtained and to be obtained from the said states, for public lands of the said United States as aforesaid, and for titles by patent thereto, well knowing such titles to such school lands to be, as they were and would be, false, fraudulent, fictitious, void and worthless, and the possession acquired thereunder unlawful, and intending thereby, and by afterwards selling and disposing of such public lands and patent-titles to the general public, to defraud the said United States out of the possession and use of, and of the title to, the public lands so to be selected, obtained and appropriated in lieu of such school lands as aforesaid, to the profit, gain, use and benefit of themselves as aforesaid; and whereby the said Frederick A. Hyde and John A. Benson were, during the said period, to induce and procure, and take advantage of the fact that they had before the said period induced and procured, the said Woodford D. Harlan and William E. Valk, by paying to them respectively divers large sums of money for that purpose, corruptly to furnish to the said Frederick A. Hyde and John A. Benson information concerning the status in the said General Land Office of all matters pertaining to their said business, and especially to their selections of public lands of the said United States based upon the false, fraudulent, fictitious, void and worthless titles to lands obtained by them in the manner aforesaid from the said states of California and Oregon, and to be exchanged for such public lands as aforesaid, and to expedite, contrary to their duty as such employees of the said United States, the matters which should be pending in the said General Land Office pertaining to the said business and to the examination of such selections, made and to be made by and on behalf of the said Frederick A. Hyde and John A.

Benson as aforesaid, by securing the approval thereof in advance of the time when in the due course of business they would be approved by the proper officers of the said General Land Office, and otherwise favoring and assisting the said Frederick A. Hyde and John A. Benson in their said business and fraudulent practice in that behalf in every way in their power; and whereby the said Frederick A. Hyde and John A. Benson were, during the said period, in like manner to induce and procure the said Woodford D. Harlan and William E. Valk corruptly to furnish to them the said Frederick A. Hyde and John A. Benson information concerning any discovery or investigation of the said fraudulent practice of them the said Frederick A. Hyde and John A. Benson by the officials of the Department of the Interior of the said United States or of the said General Land Office, to the end that the said Frederick A. Hyde and John A. Benson might be enabled to defeat the object of such investigation; and whereby, also, the said Frederick A. Hyde and John A. Benson were, during the said period, to induce and procure, and take advantage of the fact that they had before the said period induced and procured, the said Benjamin F. Allen and Grant I. Taggart, forest superintendent and forest supervisor respectively as aforesaid, by paying and giving to them respectively sums of money and other valuable consideration, for that purpose, (notwithstanding

5 it was, before and during the period aforesaid, the duty of each of them, as such forest superintendent and forest supervisor respectively, under the laws of the said United States pertaining thereto and under the rules, regulations and instructions, general and special, of the said Department of the Interior, to furnish to, and only to, their superior officers respectively in the said Department of the Interior and in the said General Land Office all information gathered by them in their official capacity, and themselves to make and transmit to their said superior officers respectively, for the consideration of those officers in determining the advisability of including, or not including, public lands of the said United States within, or excluding the same from, forest reserves of the said United States, true and accurate official reports and recommendations, based upon their own official investigations and knowledge respectively, concerning the character and condition of such of the public lands of the said United States as might come under their official supervision respectively, and concerning the advisability of including, or not including, such lands within, or excluding the same from, such forest reserves,) corruptly and contrary to their said duty to furnish to the said Frederick A. Hyde and John A. Benson all information gathered by them in their said official capacity respectively, and allow the said Frederick A. Hyde and John A. Benson to prepare and make for them the said Benjamin F. Allen and Grant I. Taggart respectively, and in their respective names as such forest superintendent and forest supervisor, divers of *of* such official reports and recommendations concerning the character and condition of such of the public lands of the said United States as had and should come under the official supervision of them the said Benjamin F. Allen and Grant I. Taggart as aforesaid, and in favor of including, or not in-

cluding, such lands within such forest reserves, or excluding the same therefrom, as should be to the interest of them the said Frederick A. Hyde and John A. Benson in the premises, and to transmit the reports and recommendations so prepared and made by the said Frederick A. Hyde and John Benson to their said superior officers,—it being, as the grand jurors aforesaid, upon their oath aforesaid, charge the fact to be, a part of the said unlawful conspiracy, combination, confederation and agreement of them the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider to secure, by this and other means too numerous and diverse to be here described, the establishment of forest reserves under the laws of the said United States in such localities in the said states of California and Oregon as would, by reason of the fact that large quantities of the school lands aforesaid in such localities were still undisposed of by, and open to purchase from, the said states respectively, best effect the object of the said unlawful conspiracy, combination, confederation and agreement; and whereby the said Henry P. Dimond, as employee, agent and attorney for the said Frederick A. Hyde and John A. Benson as aforesaid, for money and other valuable consideration, to be paid to him by the said Frederick A. Hyde and John A. Benson on that account, was in that capacity to aid and assist the said Frederick A. Hyde and John A. Benson in their said business, by appearing in their behalf before the proper officers of the said Department of the Interior and of the said General Land Office, at Washington aforesaid, and from time to time urging speedy action by those officers upon the matters there pending pertaining to the said business, and otherwise furthering the said business of the said Frederick A. Hyde and John A. Benson in the divers ways hereafter in this indictment shown,—he the said Henry P. Dimond, when so aiding and assisting the said Frederick A. Hyde and John A. Benson in their said business, well knowing the fraudulent character of that business and of the matters pertaining thereto under his supervision as such employee, agent and attorney, and that his acts as such employee, agent and attorney in so aiding and assisting the said Frederick A. Hyde and John A. Benson in their said business, were done in pursuance and to effect the object of the said unlawful conspiracy, combination, confederation and agreement; and whereby the said Joost H. Schneider was, in the capacity of their employee for hire, to aid and assist the said Frederick A. Hyde and John A. Benson in obtaining from the said states of California and Oregon the false, fraudulent, fictitious, void and worthless titles to and unlawful possession of the school lands aforesaid, in the manner aforesaid, by negotiating, in behalf of the said Frederick A. Hyde and John A. Benson, with the persons willing to sell and allow the use of their names for the purpose of making applications to purchase such school lands as aforesaid, and for making affidavits in support of such applications, and for relinquishing, transferring and conveying the said school lands to the said United States as aforesaid, and by making to other persons, in behalf of the said Frederick A. Hyde and John A. Benson, the false representations aforesaid as to the character and effect of the documents to be signed by them respectively, and so procuring the use of the names of all of

such persons for the purposes aforesaid, and also by forging, and procuring to be forged, the necessary documents for securing the titles to such lands from the said states in the names of fictitious persons, and for relinquishing, transferring and conveying the same to the said United States as aforesaid,—he the said Joost H. Schneider, when so aiding and assisting the said Frederick A. Hyde and John A. Benson in the manner aforesaid, well knowing the fraudulent character of such applications, affidavits, relinquishments, transfers, assignments and conveyances, and that they were to be made and used for the purposes aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, certain of the tracts of public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Olympia land district, in the state of Washington, which, when surveyed, would be known and described as the south half of the northeast quarter, the southeast quarter, the east half of the southwest quarter, and the southwest quarter of the southwest quarter, of section ten, the south half and the northeast quarter of section twenty-six, and all of sections fourteen, twenty-two, twenty-eight and thirty-four, in Township fifteen north, Range six west, (reference being had to the Willamette Meridian and base line,) containing in all three thousand and four hundred acres, then lately before, in pursuance of the said fraudulent practice, selected in the name of Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said states of Oregon and California, in pursuance of the same fraudulent practice, and in the manner and by the means aforesaid, some then lying within the limits of the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as sections sixteen of Townships nineteen south, in Ranges seven, eight and nine east, the northwest quarter, and south half of the northeast quarter, of section thirty-six, in Township twenty south, Range eight east, the southeast quarter of the northeast quarter of section sixteen, in Township seventeen south, Range nine east, all of section thirty-six, in Township twenty-one south, Range seven east, and the east half of the southwest quarter of section thirty-six, in Township twenty south, Range nine east, (reference being had to the said Willamette Meridian and base line,) and others then lying within the limits of the Sierra Forest Reserve, in the said state of California, and known and described as the northwest quarter of section sixteen, in Township twenty-one south, Range thirty-four east, the southwest quarter of section thirty-six, in Township twenty-three south, Range thirty-seven east, and the southeast quarter of section thirty-six, in Township twenty-three south, Range thirty-five east, (reference being had to the Mount Diablo Meridian and base line,) containing in all three thousand

and four hundred acres, (the said forest reserves being forest reserves then lately before established under the laws of the said United States,) the said Henry P. Dimond, afterwards, to wit, on the said thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the said General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F street N. W.,  
Washington, D. C.

“R”

DECEMBER 30, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke, in the matter of his Forest Reserve Lieu Selection No. 2904, for lands in Sections 14, 22, 26, 28 and 34, T. 15 N., R. 6 W., Olympia, Washington, in lieu of lands in T. 19 S., R. 7 E., 19 S., 8 E., 19 S., 9 E., 20 S., 8 E., 21 S., 7 E., 20 S., 9 E., Oregon, and T. 3 N., 24 E., 21 S., 34 E., 23 S., 37 E., 23 S., 35 E., M. D. M., California, and request the usual notice of action.

Very respectfully,

*Attorney for C. W. Clarke.*

8 he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states

of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the Visalia land district, in the said state of California, known and described as section fourteen, in Township nineteen south, Range fifteen east, (reference being had to the Mount Diablo Meridian and base line,) and containing six hundred and forty acres, then lately before selected, by and in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as section sixteen, in Township thirty-seven south, Range five east, (reference being had to the Willamette Meridian and base line,) containing six hundred and forty acres, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor which here follows:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

DECEMBER 28, 1901.

"R"

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of his Forest Reserve Lien Selection No. 961, covering All of Sec. 14, T. 19 S., R. 15 E., M. D. M., Visalia, California, in lieu of all of Sec. 16, T. 37 S., R. 5 E., Roseburg, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the twentieth day of January, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

JANUARY, 20, 1902.

"R"

To the Hon. Binger Herman, Commissioner of the General Land Office.

SIR: In the matter of Forest Reserve Lieu Selection No. 961, of F. A. Hyde, for all of Sec. 14, T. 19 S. R. 15 E. M. D. M. in lieu of all Sec. 16 T. 37 S. R. 5 E., W. M., Roseburg Dist. Ore.

I respectfully urge that this selection be the subject of early consideration on the record as it now stands in your office, and that prompt action be had thereon with a view to approval.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count, described, the said Henry P. Dimond, afterwards, to wit, on the seventh day of July, in the same year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, unlawfully did transmit by mail of the said United States, from the city of San Francisco, in the said state of California, to the said Commissioner of the said General Land Office, at Washington aforesaid, in the said District of Columbia, a certain other letter, that is to say, a letter of the tenor following:



Henry P. Dimond,  
Attorney at Law,  
415 Montgomery St.,  
San Francisco.

Dictated by H. P. D.

"R"

D.

SAN FRANCISCO, CAL., *July 7, 1902.*

Commissioner of the General Land Office, Washington, D. C.

SIR: I have the honor to file herewith in behalf of F. A. Hyde in the matter of his Forest Lien Selection No. 951 for All of Sec. 14, T. 19 S., R. 15 E., M. D. M., Visalia Land District, California, Non-Mineral, Non-Saline and Non-Occupancy Affidavit of Chas. W. Sawyer, dated July 2, 1902.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

be the said Henry P. Dimond then and there, to wit, at the several times and places of so presenting and transmitting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented and transmitted in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond, and Joost H. Schneider, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States



out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the Visalia land district, in the said state of California, known and described as the south half and the northwest quarter of section twenty-six, in Township nineteen south, Range fifteen east, (reference being had to the Mount Diablo Meridian and base line,) containing four hundred and eighty acres, then lately before selected, by and in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the northwest quarter of section sixteen, in Township twenty-three south Range seven east, and the south half of section thirty-six, in Township twenty-three south, Range nine east, (reference being had to the Willamette Meridian and base line,) containing in all four hundred and eighty acres, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DECEMBER 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of his Forest Reserve Lien Selection No. 952, covering the S.  $\frac{1}{2}$  & N. W.  $\frac{1}{4}$  of Sec. 26 T. 19 S., R. 15 E., M. D. M., Visalia, Cal., in lieu of lands in Sec. 15, T. 23 S., R. 7 E., and 35, T. 23, R. 9, W. M., Lakeview, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count de-

scribed, the said Henry P. Dimon, afterwards, to wit, on the twentieth day of January, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

JANUARY 20, 1902.

To the Hon. Binger Hermann, Commissioner of the General Land Office.

SIR: In the matter of Forest Reserve Lien Selection No. 962, of F. A. Hyde, for S.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$  of section 26, T. 19 S. R. 15 E. M. D. M. in lieu of N. W.  $\frac{1}{4}$  section 16, T. 23 S. R. 7 E. and S.  $\frac{1}{2}$  Sec. 36, T. 23 S. R. 9 E. W. M. Lakeview Dist. Ore.

I respectfully urge that this selection be the subject of early consideration on the record as it now stands in your office, and that prompt action be had thereon with a view to approval.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count described, the said Frederick A. Hyde, afterwards, to wit, on the twentieth day of March, in the year of our Lord nineteen hundred and three, and during the period mentioned in the said first count of this indictment, unlawfully did cause to be transmitted, by mail of the said United States, from the United States land office at Visalia, in the said state of California, to the then Commissioner of the said General Land Office at Washington aforesaid, in the said District of Columbia, a certain document, that is to say, a document of the tenor following:

Whereas, the undersigned, F. A. Hyde, whose post office address is San Francisco, California has made application to select under the provisions of the Act of June 4, 1897, (30 Stats., 36), in the U. S. Land Office at Visalia, California, the following described tract:

The West half of Section Twenty-six (26), in Township Nineteen (19) South of Range Fifteen (15) East of Mount Diablo Meridian.

And whereas, it is provided by Circular "P," dated January 29, 1900, of the Honorable Commissioner of the General Land Office, that a notice of such selection be posted on the ground described in

the application, and the proof of such posting be filed in the U. S. Land Office for the District in which the land is situated.

Now, therefore, Burt E. Rice is hereby duly authorized and appointed as my agent to post notices on the ground described in my said application, and to make affidavit of that fact, and also of the fact that said notices remain posted during the period of publication.

F. A. HYDE.

San Francisco, California, *November 24th, 1902.*

they the said Henry P. Dimond and Frederick A. Hyde then and there, to wit, at the several times and places of so presenting and causing to be transmitted the several letters and the document in this count of this indictment mentioned, to the said Commissioners of the said General Land Office, respectively well knowing the contents of each of the same letters, and of the said document, and well knowing that the same respectively pertained to, and were so

13 presented and caused to be transmitted in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the eleventh day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title: and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and title to, certain of the tracts of the public lands aforesaid, that is to say, certain lands lying in the Vancouver land district, in the state of Washington, and in Township six north, Range five east, (reference being had to the Willamette Meridian and base line,) containing in all seven hundred and sixty acres, a further description whereof is to the said grand jurors unknown, then lately before selected, by and in the name of the said Frederick A. Hyde,

(under the designation of F. A. Hyde,) on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu, amongst other lands, of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said states of Oregon and California, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and known and described as the northeast quarter, the northeast quarter of the northwest quarter, and the southwest quarter of the southwest quarter, of section thirty-six, in Township twenty-three south, Range seven east, and the west half of section sixteen, in Township sixteen south, Range nine east, and the north half of the southeast quarter, and the southwest quarter of the southeast quarter, of section thirty-six, in Township one south, Range eight east, (reference being had to the said Willamette Meridian and base line,) and the northwest quarter of the southwest quarter of section sixteen, in Township six north, Range twenty-two west, (reference being had to the San Bernardino Meridian and base line,) and the northwest quarter of the northeast quarter of

14 section sixteen, in Township twenty-five south, Range thirty-five east, (reference being had to the Mount Diablo Meridian and base line,) containing in all seven hundred and sixty acres, and then lying within the limits of certain forest reserves then lately before established under the laws of the said United States, that is to say, the lands described with reference to the said Willamette Meridian and base line in the Cascade Range Forest Reserve, in the said state of Oregon, the lands described with reference to the said San Bernardino Meridian and base line in the Pine Mountain and Zaca Lake Forest Reserve, in the said state of California, and the lands described with reference to the said Mount Diablo Meridian and base line in the Sierra Forest Reserve, in the said state of California, the said Henry P. Dimond, afterwards, to wit, on the said eleventh day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States, a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.  
Washington, D. C.

DECEMBER 11, 1901.

To the Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde in the matter of Forest Lien Selection No. 3144, under Act of June 4, 1897, to select certain land in Secs. 15, 16, 28, 32, 33, and 34, T. 6 N., R. 5 E., W. M., Washington, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the second day of May, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.  
Washington, D. C.

"R"

MAY 2, 1902.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to file herewith in behalf of F. A. Hyde in the matter of Forest Reserve Lien Selection No. 3144 and in compliance with letter "R" of Feby. 28, 1902, Certificates from the County Auditor and County Tax Collector of Ventura County, to the effect that the taxes on said Sec. 16 have been paid in full and that no taxes remain a lien thereon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

15 and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the twenty-second day of July, in the same year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, unlawfully did transmit, by mail of the said United States, from the city of San Francisco, in the said state of California, to the said Commissioner of the said General Land Office, at Washington aforesaid, in the said District of Columbia, a certain other letter, that is to say, a letter of the tenor following:

Codes:  
Western Union  
Anglo-American

—  
Cable address:  
"Contax"

Henry P. Dimond,  
Attorney at Law,  
415 Montgomery St., San Francisco.

"R"

D.

SAN FRANCISCO, CAL., *July 22, 1902.*

Hon. Binger Hermann, Commissioner of the General Land Office,  
Washington, D. C.

SIR: I have the honor on behalf of the selector, in the matter of lieu selection No. 3144, under the Act of June 4th, 1897 (30 Stat. 36), to select the N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , Sec. 15, N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 16, S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 28, N. E.  $\frac{1}{4}$  of Sec. 33, S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 32, T. 6 N., R. 5 E., W. M., with other lands, Vancouver, Wash. in lieu of the N. E.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 35, T. 23 S., R. 7 E., W. M., in the Cascade Forest Reserve, Ore. and the E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 14, E.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  Sec. 23, T. 10 N., R. 28 W., S. B. M. in the Pine Mountain and Zaca Lake forest reserve, Cal., and other lands, to call your attention to the fact that in view of Departmental rulings, an abandonment has been filed, covering the N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of Sec. 13, T. 6 N., R. 5 E., W. M., and all of the other requirements of your office having been previously complied with, I now respectfully ask that said selection be forthwith approved.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

he the said Henry P. Dimond then and there, to wit, at the several times and at the places of so presenting and transmitting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented and transmitted in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Diamond, and Joost H. Schneider, on the thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in said District of Columbia, under the circumstances and conditions set forth

in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the Woodward land district, in the Territory of Oklahoma, known and described as the southeast quarter of the northeast quarter of section twenty-four, in Township four north, Range three east, (reference being had to the Cimarron Meridian and base line,) containing forty acres, then lately before selected, by and in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve in the said State of Oregon, and known and described as the northwest quarter of the northwest quarter of section thirty-six, in Township thirty-seven south, Range five east, (reference being had to the Willamette Meridian and base line,) containing forty acres, the said Henry P. Dimond, afterwards, to wit, on the said thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the said General Land Office of the said United States, a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 30, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of his Forest Reserve Lieu Selection

No. 2027, for the S. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  of Sec. 24, T. 4 N., R. 3 E., Woodward, Oklahoma Ter., in lieu of the N. W.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  of Sec. 36, T. 37 S., R. 5 E., Roseberg, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the thirteenth day of May, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

MAY 13, 1902.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to file herewith in behalf of F. A. Hyde in the matter of Forest Lieu Selection No. 2027, affidavit of Fred Mahl dated April 25th 1902, as to character of said selected land described in the application on file and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

he the said Henry P. Dimond then and there, to wit, at the several times and at the place of so presenting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

6. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment,



at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the Stockton land district, in the said state of California, known and described as Lot number six in, and the northeast quarter of the southwest quarter of, section six, in Township one north, Range seventeen east, (reference being had to the Mount Diablo Meridian and base line,) containing sixty-eight and fifty-six one-hundredths acres, then lately before selected, by and in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) on behalf of the said Frederick A. Hyde and the said John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the south half of the northwest quarter of section thirty-six, in Township twenty-three south, Range seven east, (reference being had to the Willamette Meridian and base line,) containing eighty acres, the said Henry P. Dimond, afterwards, to wit on the said thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

Dec. 30, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of his Forest Reserve Lieu Selection No. 3360, for Lot 6 & N. E.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  of Sec. 6, T. 1 N., R. 17 E., M. D. M., Stockton, California, in lieu of the S.  $\frac{1}{2}$  S. W.  $\frac{1}{4}$  of Sec. 36, T. 23 S., R. 7 E., Lakeview, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

7. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twenty-seventh day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Seattle land district, in the State of Washington, which,

when surveyed, would be known and described as the west half of the northwest quarter of section twenty-eight, in Township twenty-two north, Range eight east, (reference being had to the Willamette Meridian and base line,) containing eighty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the south half of the northeast quarter of section thirty-six, in Township twenty south, Range nine east, (reference being had to the said Willamette Meridian and base line,) containing eighty acres, the said Henry P. Dimond, afterwards, to wit, on the said twenty-seventh day of December, in the year 20 of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DECEMBER 27, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke, in the matter of his Forest Reserve Lien Selection No. 3534, for the W.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$  of Sec. 28, and the N. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  of Sec. 30, T. 22 N., R. 8 E., W. M., Seattle, Washington, in lieu of lands in Sec. 36, T. 20 S., R. 9 E., W. M., Lakeview, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

8. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond, and Joost H. Schneider, on the eleventh day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Vancouver land district, in the state of Wash-  
21 ington, which, when surveyed, would be known and described as the south half of section two, in Township seven north, Range six east, (reference being had to the Willamette Meridian and base line,) containing three hundred and twenty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the south half of section sixteen, in Township twenty-one south, Range nine east, (reference being had to the said Willamette Meridian and base line,) containing three hundred and twenty acres, the said Henry P. Dimond, afterwards, to wit, on the said eleventh day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street, N. W.,  
Washington, D. C.

DECEMBER 11, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke in the matter of Forest Reserve Lieu Selection No. 1590, under Act of June 4, 1897, for certain land in Sec. 2, T. 7 N, R. 6 E., W. M., Washington, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

9. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond, and Joost H. Schneider, on the eleventh day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at

22 Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Vancouver land district, in the state of Washington, which, when surveyed, would be known and described

as section ten, in Township seven north, Range six east, (reference being had to the Willamette Meridian and base line,) containing six hundred and forty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as section thirty-six, in Township twenty-two south, Range six east, (reference being had to the said Willamette Meridian and base line,) containing six hundred and forty acres, the said Henry P. Dimond, afterwards, to wit, on the said eleventh day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street, N. W.,  
Washington, D. C.

DEC. 11, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke in the matter of Forest Reserve Lieu Selection No. 1591, under Act of June 4, 1897, for certain land in Sec. 10, T. 7 N., R. 6 E., W. M., Washington, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

23 he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

10. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the eleventh day of December, in the year of our Lord nineteen hundred and one, and

during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Vancouver land district, in the state of Washington, which, when surveyed, would be known and described as section twelve, in Township seven north, Range six east, (reference being had to the Willamette Meridian and base line,) containing six hundred and forty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as section sixteen, in Township twenty-two south, Range seven east, (reference being had to the said Willamette Meridian and base line,) containing six hundred and forty acres, the said Henry P. Dimond, afterwards, to wit, on the said eleventh day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street, N. W.,  
Washington, D. C.

DEC. 11, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke in the matter of Forest Reserve Lieu Selection No.

1592, under Act of June 4, 1897, for certain land in Sec. 12, T. 7 N., R. 6 E., W. M., Washington, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement; Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

11. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the eleventh day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands, then unsurveyed,

25 lying in the Vancouver land district, in the state of Washington, which, when surveyed, would be known and described as section thirteen, in Township seven north, Range six east, (reference being had to the Willamette Meridian and base line, containing six hundred and forty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by



the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as section sixteen, in Township twenty-two south, Range nine east, (reference being had to the said Willamette Meridian and base line.) containing six hundred and forty acres, the said Henry P. Dimond, afterwards, to wit, on the said eleventh day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.  
Washington, D. C.

DEC. 11, 1901.

Hon. Binger Herman, Commissioner of the General Land Office,

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke in the matter of Forest Reserve Lien Selection No. 1594, under Act of June 4, 1897, certain land in Sec. 13, T 7 N, R 6 E., W. M., Washington, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,

*Attorney for C. W. Clarke.*

he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

12. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond, and Joost H. Schneider, on the thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with

divers other persons to the grand jurors aforesaid unknown,  
26 knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, the states of

California and Oregon, by obtaining, from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the La Grande land district, in the said state of Oregon, known and described as Lot number four of the southeast quarter of the southwest quarter of section twenty-nine, in Township nine south, Range thirty-seven east, (reference being had to the Willamette Meridian and base line,) then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as a quantity of land in the northwest quarter of southwest quarter of section sixteen, in Township twenty-one south, of Range 7 east, (reference being had to the said Willamette Meridian and base line,) the said Henry P. Dimond, afterwards, to wit, on the said thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

DEC. 30, 1901.

"R"

Hon. Binger Herman, Commissioner of the General Land Office,

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke, in the matter of his Forest Reserve Lien Selection No. 1213, for Lot 4 of Sec. 29, T. 9 S., R. 37 E., La Grande, Oregon, in lieu of land in Sec. 16, T. 21 S., R. 7 E., W. M., Oregon, and respectfully ask the immediate approval or rejection of said selection on the present record, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

27 and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count

of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the thirteenth day of March, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.  
Washington, D. C.

"R"

MARCH 13, 1902.

Commissioner of the General Land Office.

SIR: On Dec. 30, 1901, I had the honor to file my appearance in behalf of C. W. Clarke in the matter of his Forest Lieu Selection No. 1213, under Act of June 4, 1897, (30 Stat., 36) and coupled with said appearance a request that early and definite action be had on the record.

I now respectfully call your attention to the fact that nearly three months has elapsed and no action had and earnestly request that said selection be the subject of early examination with a view to approval or rejection on the present record.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the third day of March, in the year of our Lord nineteen hundred and three, and during the period mentioned in the said first count of this indictment, unlawfully did transmit, by mail of the said United States, from the city of San Francisco, in the said State of California, to the then Commissioner of the said General Land Office, at Washington aforesaid, in the said District of Columbia, a certain other letter, that is to say, a letter of the tenor following:

Codes:  
Western Union  
Anglo-American

—  
Cable address:  
"Contax."

Henry P. Dimond,  
Attorney at Law,  
415 Montgomery St.,  
San Francisco.

"R"

MARCH 3, 1903.

Hon. W. A. Richards, Commissioner of the General Land Office,  
Washington, D. C.

SIR: I desire, in behalf of C. W. Clarke, in the matter of his forest reserve lieu selection No. 1213 for Lot 4 of the S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 29, T. 9 S., R. 37 E., W. M., in lieu of 30 acres in the N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 16, T. 21 S., R. 7 E., W. M., to call your attention to the fact that said selection has been on file in your office since November, 1899, and earnestly request that the same may be made the subject of early examination on the record as it now stands, and that prompt action be had thereon.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

he the said Henry P. Dimond then and there, to wit, at the several times and at the places of so presenting and transmitting the several letters in this count of this indictment mentioned, to the said Commissioners of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented and transmitted in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

13. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from said United States, by means of the

false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the Douglas land district, in the state of Wyoming, known and described as the southwest quarter of the southwest quarter of section twenty-eight, in Township thirty-five north, Range eighty west, (reference being had to the Sixth principal Meridian and base line,) containing forty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve

29 then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the southeast quarter of the southeast quarter of section sixteen, in Township twenty south, Range eight east, (reference being had to the Willamette Meridian and base line,) containing forty acres, the said Henry P. Dimond, afterwards, to wit, on the said thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1409 F Street N. W.,  
Washington, D. C.

"R"

DEC. 30, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke, in the matter of his Forest Reserve Lieu Selection No. 2129, for the S. W.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  of Sec. 28, T. 35 N., R. 80 W., Douglas, Wyoming, in lieu of the S. E.  $\frac{1}{4}$  S. E.  $\frac{1}{4}$  of Sec. 16, T. 20 S., R. 8 E., Lakeview, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment

ment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the third day of March, in the year of our Lord nineteen hundred and three, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to *then the* Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

MARCH 3, 1903.

Hon. W. A. Richards, Commissioner of the General Land Office,  
Washington, D. C.

SIR: I desire, in behalf of C. W. Clarke, in the matter of his forest reserve lieu selection No. 2129 for the S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 28, T. 35 N., R. 80 W., 6th P. M. in lieu of the S. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 16, T. 20 S., R. 8 E., W. M., to call your attention to the fact that said selection has been on file in your office since March, 1901, and ask that the same be made the subject of an early examination with a view to approval.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

he the said Henry P. Dimond then and there, to wit, at the several times and at the place of so presenting the several letters in this count of this indictment mentioned, to the said Commissioners of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

14. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and

to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Wausau land district, in the state of Wisconsin, which, when surveyed, would be known and described as the northwest quarter of the southeast quarter of section thirteen, in Township thirty-six north, Range eight east, (reference being had to the Fourth Principal Meridian and base line,) containing forty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the southwest quarter of the southwest quarter of section sixteen, in Township twelve south, Range nine east, (reference being had to the Willamette Meridian and base line,) containing forty acres, the said Henry P. Dimond, afterwards, to wit, on the said thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 30, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke, in the matter of his Forest Reserve Lieu Selection No. 2849, for the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Sec. 13, T. 36 N., R. 8 E., Wausau, Wisconsin, in lieu of the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Sec. 16, T. 12 S., R. 9 E., Oregon City, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
Attorney for C. W. Clarke.

he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

15. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twenty-third day of July, in the year of our Lord nineteen hundred and three, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, certain tracts of the public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Vancouver land district, in the state of Washington, which, when surveyed, would be known and described as the south half of the southeast quarter, the southwest quarter, and the south half of the northwest quarter, of section one, the south half of section two, all

32 of sections ten, twelve and thirteen, and the northwest quarter, and the southwest quarter of the northeast quarter, of section fourteen, in Township seven north, Range six east, (reference being had to the Willamette Meridian and base line,) containing in all twenty-seven hundred and sixty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade



Range Forest Reserve, in the said state of Oregon, and known and described as the southwest quarter of the northeast quarter, and the southeast quarter of the northeast quarter, of section sixteen, the south half of the southeast quarter, and the southeast quarter of the southwest quarter, of section thirty-six, in Township twenty south, Range seven east, the south half of section sixteen, in Township twenty-one south, Range nine east, section thirty-six, in Township twenty-two south, Range six east, section sixteen, in Township twenty-two south, Range seven east, section sixteen, the southeast quarter of the northeast quarter, the east half of the southeast quarter, the southwest quarter of the southeast quarter, and the northwest quarter, of section thirty-six, in Township twenty-two south, Range nine east, (reference being had to the said Willamette Meridian and base line,) containing in all twenty-seven hundred and sixty acres, the said Frederick A. Hyde, afterwards, to wit, on the twenty-ninth day of July, in the year of our Lord nineteen hundred and three, and during the said period, unlawfully did cause to be transmitted, by mail of the said United States, from the United States land office at Vancouver, in the said state of Washington, to the then Commissioner of the General Land Office of the said United States, at Washington aforesaid, in the said District of Columbia, a certain document, to wit, a document of the tenor following:

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., — — —.

C. W. CLARKE

VS.

NORTHERN PACIFIC RAILROAD COMPANY.

*Involving Forest Lieu Selection No. 1153 and Selections Amendatory Thereof.*

Hon. Commissioner, General Land Office, Washington, D. C.

SIR: Please take notice that C. W. Clarke does hereby appeal to the Hon. Secretary of the Interior from your decision found in letter "F" of Mar. 21, 1903, in which you hold for cancellation forest lieu selection 1153, and the selections amendatory thereof.

*Statement of Errors.*

*First:*—It was error to hold that the list of selections, No. 89, filed by the Northern Pacific Railroad Company on the 4th of Nov. 1899, antedated forest lieu selection No. 1153 by C. W. Clarke, the fact being that said selection No. 1153 was filed in the United States Land Office at Vancouver, Washington on the 23rd of Oct. 1899 and was, therefore, prior in point of time to the Railroad selection. (See letter of Register and Receiver of Jan. 5, 1900, transmitting supplemental applications of C. W. Clarke.)

*Second:*—On the 12th of Aug. 1902, C. W. Clarke filed in the

land office at Vancouver a re-adjustment after survey, of his selection No. 1153 which re-adjustment was a re-affirmation of his selection and amounted to a re-selection of the land after survey. No attention was paid in the decision hereby appealed from to said re-designation and re-application which omission is alleged as a second error in said decision.

*Third:*—As only a portion of Selection No. 1153 was in conflict with the Railroad selection, it was error to cancel the entire selection No. 1153 because of such conflict.

Clarke having, therefore, filed the first application and the first re-adjustment after survey, he is entitled to the land in contest as against the Northern Pacific Railroad Company. (See Secretary's decision in this case of Jan. 21, 1903 and cases therein cited.)

Respectfully,

F. A. HYDE,  
*Attorney for Clarke.*

he, the said Frederick A. Hyde, when so causing the said document to be transmitted to the said Commissioner of the said General Land Office as aforesaid, well knowing the contents of the same, and well knowing that the same pertained to, and was so transmitted in pursuance and to effect the object of, the unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

16. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the eleventh day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established under the laws of the said United States in that behalf in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Vancouver land district, in the state of Washington, which, when surveyed, would be known and described

as the north half of the northeast quarter of section fourteen, in Township seven north, Range six east, (reference being had to the Willamette Meridian and base line,) containing eighty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the northeast quarter of the northeast quarter, and the northwest quarter of the northwest quarter, of section sixteen, in Township twenty south, Range nine east, (reference being had to the said Willamette Meridian and base line,) containing eighty acres, the said Henry P. Dimond, afterwards, to wit, on the said eleventh day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States, a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

DEC. 11, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke in the matter of Forest Reserve Lieu Selection No. 1593, under Act of June 4, 1897, for certain land in Sec. 14, T. 7 N., R. 6 E., W. M. Washington, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

17. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond, and Joost H. Schneider, on the twenty-eighth day

of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established under the laws of the said United States in that behalf in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, certain tracts of the public lands aforesaid, that is to say, the lands lying in the Pueblo land district, in the state of Colorado, known and described as Lot number two of section three, in Township twenty-seven south, Range fifty-nine west, and the northwest quarter of the southeast quarter of section twenty-two, in Township twenty-six south, Range fifty-nine west, (reference being had to the Sixth Principal Meridian and base line,) containing seventy-nine and forty-eight one-hundredths acres, then lately before selected, in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the east half of the northwest quarter of section sixteen, in Township thirty-one south, Range two east, (reference being had to the Willamette Meridian and base line,) containing eighty acres, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States, a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.  
Washington, D. C.

"R"

DECEMBER 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf  
of F. A. Hyde, in the matter of his Forest Reserve Lieu Selec-  
tion No. 1609, for lands in Sec. 3, T. 27 S., R. 59 W., and  
22, T. 26 S., R. 59 W., Pueblo, Colorado, in lieu of lands in  
Section 16, T. 31 S., R. 2 E., W. M., Roseburg, Oregon, and request  
the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

he the said Henry P. Dimond then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

18. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, certain tracts of the public lands aforesaid, that is to say, the lands lying in the Visalia land district, in the said state of California, known and described as the southeast quarter and the northwest quarter of section eleven, the northwest

quarter of section fifteen, the northeast quarter of the northeast quarter, the southwest quarter of the northeast quarter, the northeast quarter of the southeast quarter, the southwest quarter of the southeast quarter, the southwest quarter of the southwest quarter, the northeast quarter of the southwest quarter, the southwest quarter of the northwest quarter, and the northeast quarter of the northwest quarter, of section nine, and the southwest quarter of the southeast quarter, and the southwest quarter of the southwest quarter, of section seventeen, all in Township sixteen south, Range twelve east, (reference being had to the Mount Diablo Meridian and base line.)

37 containing in all eight hundred and eighty acres, then lately before selected, in the name of one A. S. Baldwin, by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the east half of the northeast quarter, and the southwest quarter, of section thirty-six, in Township one south, Range ten east, and section thirty-six, in Township two south, Range ten east, (reference being had to the Willamette Meridian and base line,) containing in all eight hundred and eighty acres, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States, a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DECEMBER 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office,

SIR: I have the honor to hereby enter my appearance in behalf of A. S. Baldwin, in the matter of his Forest Reserve Lien Selection No. 1103, for lands in Secs. 9, 11, 15 and 17, T. 16 S., R. 12 E., M. D. M., Visalia, Cal., in lieu of lands in Secs. 36, T. 1 S., R. 10 E., and 36, T. 2 S., R. 10 E., W. M., Oregon City, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for A. S. Baldwin.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indict-

ment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the twentieth day of January, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

JANUARY 20, 1902.

Hon. Binger Hermann, Commissioner of the General Land Office.

SIR: In the matter of Forest Reserve Lieu Selection No. 1103, A. S. Baldwin, for S. E.  $\frac{1}{4}$  and N. W.  $\frac{1}{4}$  Sec. 11, N. W.  $\frac{1}{4}$  38 Sec. 15, N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , N. W.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 9, S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 17. 16 S. 12 E. M. D. M. in lieu of E.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of Sec. 35, T. 1 S. R., all of Sec. 361, T. 2 S. 10 E., W. M. Oregon City Dist. Ore.

I respectfully urge that this selection be the subject of early consideration on the record as it now stands in your office, and that prompt action be had thereon with a view to approval.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for A. S. Baldwin.*

he the said Henry P. Dimond then and there, to wit, at the several times and at the place of so presenting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

19. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree to-



gether, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the Visalia land district, in the said state of California, known and described as the west half of the southeast quarter of section two, in Township thirty-one south, Range twenty-two east, (reference being had to the Mount Diablo Meridian and base line,) containing eighty acres, then lately before selected, in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the southwest quarter of the northwest quarter, and forty acres of Lot number three, of section sixteen, in Township twenty-four south, Range four east, (reference being had to the Willamette Meridian and base line,) containing eighty acres, the said Henry P. Dimond, afterwards, to wit, on the said thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 30, 1901.

Hon. Binger Herman, Commissioner of the General Land Office,

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of his Forest Reserve Lien Selection



No. 2086, for the W.  $\frac{1}{2}$  S. E.  $\frac{1}{4}$  of Sec. 2, T. 31 S., R. 22 E., M. D. M., Visalia, Cal., in lieu of lands in Sec. 16, T. 24 S., R. 4 E., Oregon City, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,

*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the eleventh day of September, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, unlawfully did transmit by mail of the said United States, from the city of San Francisco, in the said State of California, to the said Commissioner of the said General Land Office, at Washington aforesaid, in the said District of Columbia, a certain other letter, that is to say, a letter of the tenor following:

Codes:

Western Union  
Anglo-American

Cable Address:  
"Contax"

Henry P. Dimond,

Attorney at Law,

415 Montgomery St., San Francisco.

SEPT. 11, 1902.

Hon. Binger Hermann, Commissioner General Land Office,  
Washington, D. C.

SIR: I have the honor to transmit herewith, in behalf of F. A. Hyde in the matter of his Forest Reserve Selection No. 2086, W.  $\frac{1}{2}$  S. E.  $\frac{1}{4}$  Sec. 2, T. 31 S., R. 22 E., M. D. M., in lieu of S. W.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  and 40 acres of Lot 3 (excess used) Sec. 16, T. 24 S., R. 4 E., W. M., Cascade Range Forest Reserve, and in compliance with the requirements of your letter "R" of July 22, 1902, certificates from the County Tax Collector and County Clerk that there are no taxes due or unpaid and no suits pending of judgments docketed that would in any way affect the title to the above described base land; also a certified copy of the original deed from F. A. Hyde & wife to the United States embracing therein the land above mentioned, and would ask that the selection be the subject of early examination with a view to approval.

Very respectfully,

HENRY P. DIMOND,

*Attorney for F. A. Hyde.*

Enc.

he the said Henry P. Dimond then and there, to wit, at the several times and places of so presenting and transmitting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented and transmitted in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

20. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twenty-seventh day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the San Francisco land district, in the said state of California, known and described as the southeast quarter of the southwest quarter of section thirty-five, in Township thirty-two south, Range nineteen east, (reference being had to the Mount Diablo Meridian and base line,) containing forty acres, then lately before selected, in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) by and on behalf of the said

41 Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the southeast quarter of the northwest quarter of section sixteen, in Township thirty-five

south, Range six east, (reference being had to the Willamette Meridian and base line,) containing forty acres, the said Henry P. Dimond, afterwards, to wit, on the said twenty-seventh day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States, a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DECEMBER 27, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of his Forest Lieu Selection No. 1000, for the S. E.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  of Sec. 35, T. 32 S., R. 19 E., M. D. M., San Francisco, California, in lieu of the S. E.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  of Sec. 16, T. 35 S., R. 6 E., W. M., Lakeview, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

he the said Henry P. Dimond then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

21. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joest H. Schneider, on the twenty-fourth day of October, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit

of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the Visalia land district, in the said state of California, known and described as the northeast quarter of section twenty-six, in Township nineteen south, Range fifteen east, (reference being had to the Mount Diablo Meridian and base line,) containing one hundred and sixty acres, then lately before selected, in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the northeast quarter of section sixteen, in Township thirty-one south, Range two east, (reference being had to the Willamette Meridian and base line,) containing one hundred and sixty acres, the said Henry P. Dimond, afterwards, to wit, on the said twenty-fourth day of October, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States, a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
1419 F St. N. W.,  
Washington, D. C.

OCT. 24, 1901.

To the Hon. Herman Binger, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of Forest Lieu Selection No. 960, for the N. E.  $\frac{1}{4}$  of Sec. 26, T. 19 S., R. 15 E., M. D. M., Visalia, Cal., in lieu of N. E.  $\frac{1}{4}$  of Sec. 16, T. 31 S., R. 2 E., W. M., Oregon, and respectfully ask that this selection be the subject of early consideration, requesting the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of

public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the sixteenth day of January, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

JANUARY 16, 1902.

To the Hon. Binger Herman, Commissioner of the General Land Office.

SIR: Under date of October 30 1901, I had the honor to address a letter to you filing my appearance in behalf of F. A. Hyde, in the matter of Forest Selection No. 950, for the N. E.  $\frac{1}{4}$  of Sec. 26, T. 19 S., R. 15 E., M. D. M., Visalia, Cal., in lieu of N. E.  $\frac{1}{4}$  of Sec. 16, T. 31 S., R. 2 E., W. M., Oregon, and requesting that said selection be the subject of early consideration.

Said appearance and letter was on the 31st day of October 1901 duly acknowledged by your office with the statement that "the matter would receive prompt attention," but since that date I have received no further notice of action.

I now, therefore again respectfully urge that said selection be the subject of early consideration on the record thereof, as it now stands in your office, and that action therein be had, with a view to approval.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

he the said Henry P. Dimond then and there, to wit, at the several times and places of so presenting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

22 And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States

out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the Sacramento land district, in the said state of California, known and described as the southeast quarter of the northwest quarter, and the southwest quarter of the northeast quarter, of section thirty, in Township twelve north, Range fourteen east, (reference being had to the Mount Diablo Meridian and base line,) containing eighty acres, then lately before selected, in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the northwest quarter of the southeast quarter of section sixteen, in Township thirty-one south, Range two east, and the southwest quarter of the southwest quarter of section sixteen, in Township twenty-three south, Range eight east, (reference being had to the Willamette Meridian and base line,) containing eighty acres, the said Henry P. Dimond, afterwards, to wit, on the said thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States, a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 30, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of his Forest Reserve Lieu Selection No. 4030, for lands in Section 30, T. 12 N., R. 14 E., M. D. M., Sacramento, California, in lieu of lands in Section 16, T. 31 S.,

R. 2 E., and Sec. 16, T. 23 S., R. 8 E., W. M. Roseburg and Lakeview, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to  
45 appropriate, and defraud the said United States out of the possession and use of and the title to the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the thirty-first day of March, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"N"

MARCH 31, 1902.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to file herewith in behalf of F. A. Hyde in the matter of his Forest Lieu Selection No. 4030, Act of June 4, 1897 (30 Stat., 35), Authority to Post Notices on Land Dated April 18, 1901.

Said filing is made in compliance with requirement of letter "N" of March 3, 1902 and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count described, the said Frederick A. Hyde, afterwards to wit, on the said thirty-first day of March in the same year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did cause to be presented to the said Commissioner of the said General Land Office, by the hand of the said Henry P. Dimond, a certain document, that is to say, a document of the tenor following:

Whereas, the undersigned, F. A. Hyde, whose post office address is San Francisco, Cal. has made application to select under the pre-

visions of the Act of June 4, 1897, (30 Stats., 36), in the U. S. Land Office at Sacramento, Cal., the following described tract:

S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 30, T. 12 N., R. 14 E. M. D. M.

And whereas, it is provided by Circular "P" dated January 29, 1900, of the Honorable Commissioner of the General Land Office, that a notice of such selection be posted on the ground described in the application, and the proof of such posting be filed in the U. S. Land Office for the District in which the land is situated.

Now, therefore, S. E. Kieffer is hereby duly authorized and appointed as my agent to post notices on the ground described in my said application, and to make affidavit of that fact, and also of the fact that said notices remain posted during the period of publication.

F. A. HYDE.

San Francisco, California, April 18th 1901.

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this  
46 indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said thirty-first day of March, in the same year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain document, that is to say, the same document in this count last above set forth according to its tenor,—they the said Henry P. Dimond and Frederick A. Hyde then and there, to wit, at the several times and places of so presenting and causing to be presented the several letters and the document in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, respectively well knowing the contents of each of the same letters and of the said document, and well knowing that the same respectively pertained to, and were so presented and caused to be presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

23. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large



tracts of the public land of the said United States open and to be open- to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, certain tracts of the public lands aforesaid, that is to say, the lands lying in the Visalia land district, in the said state of California, known and described as the east half, the south half of the southwest quarter, and the north half of the northwest quarter, of section ten, in Township nineteen south, Range fifteen east, (reference being had to the Mount Diablo Meridian and base line), containing in all four hundred and eighty acres, then lately before selected, in the name of the

47 said Frederick A. Hyde, (under the designation of F. A. Hyde,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the east half and the southwest quarter of section sixteen, in Township twenty-three south, Range seven east, (reference being had to the Willamette Meridian and base line), containing four hundred and eighty acres, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DECEMBER 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of his Forest Reserve Lieu Selection No. 964, for lands in Section 10, T. 19 S., R. 15 E., M. D. M.,

Visalia, California, in lieu of Lands in Sec. 16, T. 23 S., R. 7 E., Lakeview, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further, in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the twentieth day of January, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

JANUARY 20, 1902.

To the Hon. Binger Hermann, Commissioner of the General Land Office.

SIR: In the matter of the Forest Reserve Lieu Selection No. 964, of F. A. Hyde, for E. /2, S. /2 of S. W. /4 and N. /2 of N. W. /4 Sec. 10, T. 19 S. R., 15 E., M. D. M., in lieu of E. /2 and S. W. /4 Sec. 16, T. 23 S. R. 7 E. W. M. Lakeview Dist. Ore.

I respectfully urge that this selection be the subject of early consideration on the record as it now stands in your office, and that prompt action be had thereon with a view to approval.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

he the said Henry P. Dimond then and there, to wit, at the several times and at the place of so presenting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

24. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twenty-seventh

day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of public lands aforesaid, that is to say, the lands lying in the Stockton land district, in the said state of California, known and described as Lot nine of section nineteen, and all of that portion of the northeast quarter of the northeast quarter, outside of certain mining claims on the southern portion thereof, of section thirty, in Township one south, Range sixteen east, (reference being had to the Mount Diablo Meridian and base line,) containing forty acres, then lately before selected, in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) by and on behalf of the said Frederick A. Hyde and John A.

49 Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the southwest quarter of the northeast quarter of section thirty-six, in Township twenty-three south, Range eight east, (reference being had to the Willamette Meridian and base line,) containing forty acres, the said Henry P. Dimond, afterwards, to wit, on the said twenty-seventh day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street, N. W.,  
Washington, D. C.

"R "

DECEMBER 27, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of his Forest Reserve Lien Selection No. 751, for lands in Section 30, T. 1 S., R. 16 E., M. D. M., Stockton, California, in lieu of the S. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  of Sec. 33, T. 23, S., R. 8 E., W. M., Lakeview, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the fifteenth day of March, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street, N. W.,  
Washington, D. C.

"N."

MARCH 15, 1902.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor in behalf of F. A. Hyde, in the matter of his Forest Lien Selection No. 751, under Act June 4, 1897, (30 Stats., 36), to respectfully ask why no further action with a view to the approval of said selection has been had, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

50 He the said Henry P. Dimond then and there, to wit, at the several times and at the place of so presenting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented in pursuance and to effect the

object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

25. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the Visalia land district, in the said state of California, known and described as the northeast quarter of the southeast quarter of section twenty-two, in Township nineteen south, Range fifteen east, (reference being had to the Mount Diablo Meridian and base line,) containing forty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of Oregon, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Cascade Range Forest Reserve, in the said state of Oregon, and known and described as the southwest quarter of the northeast quarter of section sixteen, in Township seventeen south, Range nine east, (reference being had to the Willamette Meridian and base line,) containing forty acres, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the year of our Lord nineteen hundred and one, and during the said period, unlawfully did present to the then Commissioner of the General Land Office of the said United States,

at Washington aforesaid, in the said District of Columbia, a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DECEMBER 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke, in the matter of his Forest Reserve Lieu Selection No. 1263, for the N. E.  $\frac{1}{4}$  S. E.  $\frac{1}{4}$  of Sec. 22, T. 19 S., R. 15 E., M. D. M., Visalia district, California, in lieu of the S. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  of Sec. 16, T. 17 S., R. 9 E., Roseburg, Oregon, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

he the said Henry P. Dimond, when so presenting the said letter to the said Commissioner of the said General Land Office well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

26. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond, and Joost H. Schneider, on the twenty-seventh day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of

52 themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, certain tracts of the public lands aforesaid, that is to say, a tract of land,

then unsurveyed, lying in the Stockton land district, in the said state of California, which, when surveyed, would be known and described as the west half of the southeast quarter of section five, in Township one south, Range sixteen east, (reference being had to the Mount Diablo Meridian and base line,) containing eighty acres; a tract of land, then unsurveyed, lying in the said Stockton land district, in the said state of California, which, when surveyed, would be known and described as the north half of the southeast quarter, the southeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter, of section twenty-five, in Township two north, Range sixteen east, (reference being had to the said Mount Diablo Meridian and base line,) containing one hundred and sixty acres; a tract lying in the San Francisco land district, in the said state of California, known and described as the southeast quarter of the southwest quarter of section thirty-five, in Township twenty-nine south, Range fourteen east, (reference being had to the said Mount Diablo Meridian and base line,) containing forty acres; a tract lying in the said San Francisco land district, in the said state of California, known and described as the southwest quarter of the southeast quarter of section twenty-six, in Township twenty-five south, Range ten east, (reference being had to the said Mount Diablo Meridian and base line,) containing forty acres; a tract of land, then unsurveyed, lying in the Waterville land district, in the state of Washington, which, when surveyed, would be known and described as the fractional northeast quarter of the southwest quarter of section one, in Township thirty-eight north, Range twenty-five east, (reference being had to the Willamette Meridian and base line,) containing twenty-three and fifty-three one-hundredths acres, being all of the said northeast quarter of the southwest quarter of the said section not included within mineral surveys numbered 183, 189 and 190; a tract of land, then unsurveyed, lying in the said Waterville land district, in the said state of Washington, which, when surveyed, would be known and described as the fractional northeast quarter of the northwest quarter of section one, in Township thirty-eight north, Range twenty-five east, (reference being had to the said Willamette Meridian and base line,) containing twenty-five and seventy-eight one-hundredths acres, being all of the said northeast quarter of the northwest quarter of the said section not included within the Colville Indian Reservation; a tract of land, then unsurveyed, lying in the said Waterville land district, in the said state of Washington, which when surveyed, would be known and described as the northwest quarter of the southeast quarter of section one, in Township thirty-eight north, Range twenty-five east, (reference being had to the said Willamette Meridian and base line,) containing forty acres; a tract of land, then unsurveyed, lying in the said Waterville land district, in the said state of Washington, which, when surveyed, would be known and described as the fractional southwest quarter of the northwest quarter of section six, in Township thirty-eight north, Range twenty-six east, (reference being had to the said Willamette Meridian and base line,) containing thirteen and forty-nine one-hundredths acres, being all of the said southwest



quarter of the northwest quarter of the said section lying south and southeast of the mining claims designated as the "Rustler Quartz Claim" and the "Missing Link Quartz Claim;" a tract of land, then unsurveyed, lying in the said Waterville land district, in the said state of Washington, which, when surveyed, would be known and described as the fractional southeast quarter of the northeast quarter of section one, in Township thirty-eight north, Range twenty-five east, (reference being had to the said Willamette Meridian and base line,) containing thirty-eight and ninety-three one-hundredths acres, being all of the said southeast quarter of the northeast quarter of the said section except the portion covered by the "Rustler Quartz Mining Claim;" a tract of land, then unsurveyed, lying in the said Waterville land district, in the said state of Washington, which, when surveyed, would be known and described as the northwest quarter of the southwest quarter of section six, in Township thirty-eight north, Range twenty-six east, (reference being had to the said Willamette Meridian and base line,) containing forty acres; a tract of land, then unsurveyed, lying in the said Waterville land district, in the said state of Washington, which, when surveyed, would be known and described as the fractional southeast quarter of the northwest quarter of section one, in Township thirty-eight north, Range twenty-five east, (reference being had to the said Willamette Meridian and base line,) containing twenty-seven and fifty-three one-hundredths acres, being all of the said southeast quarter of the northwest quarter of the said section not included within mineral surveys numbered 181, 182 and 183; a tract of land, then unsurveyed, lying in the said Waterville land district, in the said state of Washington, which, when surveyed, would be known and described as the northeast quarter of the southeast quarter of section one, in Township thirty-eight north, Range twenty-five east, (reference being had to the said Willamette Meridian and base line,) containing forty acres; and a tract of land, then unsurveyed, lying in the said Waterville land district, in the said state of Washington, which, when surveyed, would be known and described as the fractional southwest quarter of the northeast quarter of section one, in Township thirty-eight north, Range twenty-five east, (reference being had to the said Willamette Meridian and base line,) containing thirty-four and thirty-five one-hundredths acres, being all of the said southwest quarter of the northeast quarter of the said section not included within the mining claim designated as the "Chicago Quartz Claim;"—all of which said tracts

were then lately before selected, in the name of Elizabeth Diamond, by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the fraudulent practice in the said first count mentioned, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of California, in the said name of Elizabeth Diamond, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Sierra Forest Reserve, in the said state of California, and known and de-



scribed as section sixteen, in Township twenty-eight south, Range thirty-four east, (reference being had to the said Mount Diablo Meridian and base line,) containing six hundred and forty acres,—the said Henry P. Dimond, afterwards, to wit, on the said twenty-seventh day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

“R”

DECEMBER 27, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Selection No. 460, for the W.  $\frac{1}{2}$  S. E.  $\frac{1}{4}$  of Sec. 5, T. 1 S., R. 16 E., M. D. M., Stockton, Cal., in lieu of W.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$  of Sec. 16, T. 28 S., R. 34 E., M. D. M., Independence district, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said twenty-seventh day of December, in the same year of our Lord nineteen hundred and one, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

“R”

DECEMBER 27, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Selection No. 483, for lands in Sec. 25, T. 2 N., R. 16 E., M. D. M., Stockton, California, in lieu of the S. W.  $\frac{1}{4}$  of

Sec. 16, T. 28 S., R. 34 E., M. D. M., Independence, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said twenty-seventh day of December, in the same year of our Lord nineteen hundred and one, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DECEMBER 27, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Selection No. 705, for the S. E.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  of Sec. 35, T. 29 S., R. 14 E., M. D. M., San Francisco, California, in lieu of the S. E.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  of Sec. 15, T. 28 S., R. 34 E., M. D. M., Independence, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said twenty-seventh day of December, in the same year of our Lord nine-described, the said Henry P. Dimond, afterwards, to wit, on the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DECEMBER 27, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve  
56      Lieu Selection No. 705<sup>1</sup>/<sub>2</sub>, for the S. W. <sup>1</sup>/<sub>4</sub> S. E. <sup>1</sup>/<sub>4</sub> of Sec. 25, T. 25 S., R. 10 E., M. D. M., San Francisco, California, in lieu of the N. E. <sup>1</sup>/<sub>4</sub> N. W. <sup>1</sup>/<sub>4</sub> of Sec. 16, T. 28 S., R. 34 E., M. D. M., Independence land district, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the twenty-eighth day of December, in the same year of our Lord nineteen hundred and one, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Selection No. 1034, for the NE. <sup>1</sup>/<sub>4</sub> SW. <sup>1</sup>/<sub>4</sub> of Sec. 1, T. 38 N., R. 25 E., Waterville, Washington, in lieu of land in Section 16, T. 28 S., R. 34 E., M. D. M., Independence, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to

appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the same year of our Lord nineteen hundred and one, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Selection No. 1035, for the NE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E., Waterville, Washington, in lieu of land in Section 57 16, T. 28 S., R. 34 E., M. D. M., Independence, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the same year of our Lord nineteen hundred and one, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Selection No. 1035, for the N. W.  $\frac{1}{4}$  S. E.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E., Waterville, Washington, in lieu of land in Section 16, T. 28

S., R. 34 E., M. D. M., Independence, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the same year of our Lord nineteen hundred and one, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Selection No. 1037, for the SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$  of Sec. 6, T. 38 N., R. 26 E., Waterville, Washington, in lieu of land in Sec. 16, T. 28 S., R. 34 E., M. D. M., Independence, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

58 and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the same year of our Lord nineteen hundred and one, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Section No. 1038, for the S. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E., W. M., Waterville, Wash., in lieu of land in Sec. 16, T. 28 S., R. 34 E., M. D. M., Independence, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the same year of our Lord nineteen hundred and one, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Selection No. 1039, for the N. W.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  of Sec. 6, T. 38 N., R. 26 E., Waterville, Washington, in lieu of the 40 acres in N. E.  $\frac{1}{4}$  of Sec. 16, T. 28 S., R. 34 E., M. D. M., Independence, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this  
59 indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the same year of

our Lord nineteen hundred and one, and during the period mentioned in the first said count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R "

DEC. 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Selection No. 1040, for the S. E.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E., Waterville, Washington, in lieu of land in Section 16, T. 28 S., R. 34 E., M. D. M., Independence, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the same year of our Lord nineteen hundred and one, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R "

DEC. 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Selection No. 1041, for the N. E.  $\frac{1}{4}$  S. E.  $\frac{1}{4}$  of Sec. 1, Tp. 38 N., R. 25 E., Waterville, Washington, in lieu of land in Section 16, T. 28 S., R. 34 E., M. D. M., Independence, Cal., and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the said twenty-eighth day of December, in the same year of our Lord nineteen hundred and one, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 28, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Elizabeth Dimond, in the matter of her Forest Reserve Lieu Selection No. 1042, for the S. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E., Waterville, Washington, in lieu of land in Section 16, T. 28 S., R. 34 E., M. D. M., Independence, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the sixth day of February, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R."

FEBRUARY 6, 1902.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby acknowledge receipt of notice of approval (letter "R" of January 18, 1902) in the matter of Forest Reserve Lieu Selection No. 1039 of Elizabeth Dimond, and in view



of said approval I respectfully ask that said selection be sent to patent at earliest possible date and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Elizabeth Dimond.*

he the said Henry P. Dimond then and there, to wit, at the several times and at the place of so presenting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

61 27. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the eleventh day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, certain of the tracts of the public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Vancouver land district, in the state of Washington, which, when surveyed, would be known and described as the south half of the northwest quarter, and the northwest quarter of the northwest quarter, of section eighteen, the west half, the west half of the northeast quarter, and the west half of the southeast quarter, of section nineteen, the south half of section twenty-nine, the northeast quarter, the north half of the southeast quarter, the southeast quarter of the southeast quarter, the east half of the northwest quarter, and the northwest quarter of the northwest quarter, of section thirty-one, the southeast quarter of the northeast quarter, the west half of the northeast quarter, the southeast quarter of the northwest quarter, the northeast quarter

of the southwest quarter, the south half of the southwest quarter, and the west half of the southeast quarter, of section thirty-two, all in Township six north, Range five east, (reference being had to the Willamette Meridian and base line.) containing in all sixteen hundred and eighty acres, then lately before selected, in the name of F. A. Hyde & Co., on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of California, in pursuance of the same fraudulent practice, and in the

62 manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Pine Mountain and Zaca Lake Forest Reserve, in the said state of California, and known and described as the south half, the northwest quarter, and the west half of the northeast quarter, of section sixteen, in Township five north, Range twenty two west, and the west half of the northeast quarter of section thirty-six, in Township six north, Range nineteen west, and the north half of section sixteen, in Township seven north, Range twenty-two west, and the northeast quarter, and the northeast quarter of the northwest quarter, of section thirty-six, in Township eight north, Range twenty-four west, and the north half of the southeast quarter, the southwest quarter of the southeast quarter, and the southwest quarter, of section sixteen, in Township three north, Range four west, and the northeast quarter and the west half of the southeast quarter of section thirty-six, in Township seven north, Range twenty-three west, (reference being had to the San Bernardino Meridian and base line.) containing in all sixteen hundred and eighty acres, excepting that the lands described as lying in Township three north, range four west, lay in the San Bernardino Forest Reserve, in the said state of California,—the said Henry P. Dimond, afterwards, to wit, on the said eleventh day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F. Street N. W.  
Washington, D. C.

DEC. 11, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde & Co., in the matter of Forest Reserve Lieu Selection No. 3571, under Act of June 4, 1897, to select certain land in Secs. 18, 19, 29, 31 and 32 T. 6 N. R. 5 E. W. M., Washington, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde & Co.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the seventh day of April, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

63

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.  
Washington, D. C.

"R."

APRIL 7, 1902.

Hon. Binger Hermann, Commissioner of the General Land Office.

SIR: In compliance with letter "R" of February 19, 1902, I have the honor to file herewith, in behalf of F. A. Hyde & Co., in the matter of Forest Lieu Selection No. 3571, under Act of June 4, 1897 (30 Stat., 36), full abstracts of title as to the base lands and certificates of County Clerks as to liens so far as it is possible to obtain the same.

It will be noted that the County Clerk at Ventura, California, declined to give his certificate or make an examination, and I file herewith his official letter of March 18, 1902, stating that the giving of such certificate is not a part of his duty, and the writer knows of no law in California by which a County Clerk (Clerk of Court) can be compelled so to do.

I have, therefore, obtained and likewise filed herewith the certificate of the Abstract Company and the affidavit of its Manager, that there are no judgments against any of the parties in interest.

I desire also to call your attention to the fact that in some of the Abstracts there are a number of mining claims noted, but the record shows they were all claims filed after the land went to the State, and are the result of the general oil craze.

These mining locations were put all over the county and have generally been abandoned since then.

Believing that the filing of above completes the record in said Selection No. 3571, I respectfully ask an early examination with a view to the prompt approval thereof, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Att'y for F. A. Hyde & Co.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and

to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the ninth day of April, in the same year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

APRIL 9, 1902.

Hon. Binger Hermann, Commissioner of the General Land Office.

SIR: In the matter of Forest Lieu Selection No. 3571, of F. A. Hyde & Co., one Fred W. Lake Attorney, on or about December 18, 1901, filed a formal protest, as to Sec. 36, T. 6 N., R. 19 W., S. B. M. the same being in part the base lands used in said Selection 3571.

By letter "R" of February 1902 said Lake was called upon for certain proofs and allowed thirty days in which to furnish same.

Inasmuch as said thirty days have elapsed and said proofs have not been filed, I respectfully ask that the protest of said Lake be forthwith dismissed so far as it applies to said Selection 3571, and

64 Sec. 36, T. 6 N., R. 19 W., S. B. M., and the same having been made "special" I earnestly request that prompt action be had with a view to approval.

Very truly,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde & Co.*

he the said Henry P. Dimond then and there, to wit, at the several times and at the place of so presenting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

28. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers

other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, certain of the tracts of public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Eureka land district, in the state of California, which, when surveyed, would be known and described as the south half of the south half, and the northeast quarter of the northwest quarter, of section twenty-four, the west half of the east half, and the southeast quarter of the southeast quarter, of section twenty-three, in Township four south, Range one east, (reference being had to the Humboldt Meridian and base line,) containing in all four hundred acres, then lately before selected, in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson,

65 from the said state of California, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Sierra Forest Reserve, in the said state of California, and known and described as the northeast quarter, and the north half of the southeast quarter, of section sixteen, in Township fourteen south, Range thirty-one east, and the southeast quarter of section sixteen, in Township eighteen south Range thirty-two east, (reference being had to the Mount Diablo Meridian and base line,) containing in all four hundred acres, the said Henry P. Dimond, afterwards, to wit, on the said thirtieth day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R "

DEC. 30, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of his Forest Reserve Lieu Selection No. 2061, for lands in Secs. 23 & 24, T. 4 S., R. 1 E., H. M., Eureka, California, in lieu of lands in Secs. 16, T. 14 S., R. 31 E., and 16, T. 18 S., R. 32 E., M. D. M., Visalia, California, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the twenty-fourth day of December, in the year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, unlawfully did transmit by mail of the said United States, from the city of San Francisco, in the said state of California, to the said Commissioner of the said General Land Office, at Washington aforesaid, in the said District of Columbia, a certain other letter, to wit, a letter of the tenor following:

Codes:

Western Union.  
Anglo-American.

Cable Address:  
"Contax."

Henry P. Dimond,  
Attorney at Law,  
415 Montgomery St., San Francisco.

"R "

DECEMBER 24, 1902.

Hon. Binger Hermann, Commissioner, General Land Office, Washington, D. C.

SIR: I have the honor to file herewith in the matter of the Forest Lieu Selection of F. A. Hyde, No. 2061, S.  $\frac{1}{2}$  S.  $\frac{1}{2}$ , N. E.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  Sec. 24, W.  $\frac{1}{2}$  E.  $\frac{1}{2}$ , S. E.  $\frac{1}{4}$  S. E.  $\frac{1}{4}$  Sec. 23, T. 4 S., R. 1 E., H. M., in lieu of N. E.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  S. E.  $\frac{1}{4}$  Sec. 16, T. 14 S., R. 31 E., and S. E.  $\frac{1}{4}$  Sec. 16, T. 18 S., R. 32 E., M. D. M., and in compliance with the requirements of your letter

"R" of December 1, 1902, certificate of the County Clerk of Tulare County, that there are no judgments, liens or pending suits of record that in any way affect title to the base land above described.

Very respectfully,

HENRY P. DIMOND,

*Attorney for F. A. Hyde.*

he the said Henry P. Dimond then and there, to wit, at the several times and at the places of so presenting and transmitting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

29. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the sixteenth day of January, in the year of our Lord nineteen hundred and two, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, certain tracts of the public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Vancouver land district, in the state of Washington, which, when surveyed, would be known and described as the northeast quarter of section twenty, the north half of section thirty, and the south half of the southwest quarter of section sixteen, in Township eight north, Range three east, (reference being had to the Willamette Meridian and base line,) containing five hundred and sixty acres, then lately before selected, in the name of the said Frederick A. Hyde, (under the designation of F. A. Hyde,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraud-

ulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of California, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Sierra Forest Reserve, in the said state of California, and known and described as the east half, the southwest quarter, and the east half of the northwest quarter, of section thirty-six, in Township twenty-five south, Range thirty-three east, (reference being had to the Mount Diablo Meridian and base line,) containing five hundred and sixty acres, the said Henry P. Dimond, afterwards, to wit, on the said sixteenth day of January, in the year of our Lord nineteen hundred and two, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

JANUARY 16, 1902.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde, in the matter of his Forest Reserve Lien Selection No. 2885, for N. E.  $\frac{1}{4}$  of Sec. 20, N.  $\frac{1}{2}$  of Sec. 30, S.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of Sec. 16, T. 8 N., R. 3 E., W. M., 56 acres, in lieu of E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  of Sec. 36, T. 25 S., R. 33 E., M. D. M. respectfully urging that said selection be the subject of prompt consideration with a view to early approval, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tracts of public lands in this count described, the said Frederick A. Hyde, afterwards, to wit, on the tenth day of April, in the year of our Lord nineteen hundred and three, and during the period mentioned in the said first count of this indictment, unlawfully did cause to be transmitted, by mail of the said United States, from the United States land office at Vancouver, in the said state of Washington, to the then Commissioner of the said General Land Office, at Washington aforesaid, in the said District of Columbia, a certain document, to wit, a document of the tenor following:



68 *Partial Abandonment of Forest Reserve Selection No. 2885.*

SAN FRANCISCO, CAL., *March 31, 1903.*

Register and Receiver, United States Land Office, Vancouver, Wash.

SIRS: Whereas, on the 19th of February, 1900, the undersigned filed in your office under the Act of June 4th, 1897, forest reserve lieu land selection number 2885, for the unsurveyed N. E.  $\frac{1}{4}$  Sec. 20; N.  $\frac{1}{2}$  of Sec. 30, and S.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of Sec. 16, T. 8 N., R. 3 E., W. M., in lieu of the E.  $\frac{1}{2}$ , S. W.  $\frac{1}{4}$ , and E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  of Sec. 36, T. 25 S., R. 33 E., M. D. M., Sierra Forest Reserve, California, and

Whereas, it has been decided by the Department of the Interior that the unsurveyed sixteenth and thirty-sixth sections in the State of Washington are not subject to such selections.

Now therefore, I, F. A. Hyde of San Francisco, California, in conformity with the aforesaid Departmental decision do hereby abandon and relinquish the said South half of the Southwest quarter of Section (16), of said selection number 2885, in lieu of the East half of the North-west quarter of Section Thirty-six (36), Township Twenty-five (25) South, Range Thirty-three (33) East, Mount Diablo Meridian, and request that the said selection to the extent of the aforesaid eighty (80) acres, be canceled on the records and files of your office.

Witness my hand this 31st day of March, 1903.

F. A. HYDE

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On the 31st day of March in the year One Thousand Nine Hundred and Three (1903) before me, Thomas S. Burnes, a Notary Public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared F. A. Hyde, known to me to be the person described in, whose name is subscribed to and who executed the annexed instrument and he acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, the day and year last above written.

THOMAS S. BURNES,

*Notary Public in and for the City and County  
of San Francisco, State of California.*

(which said document then bore the impression of the notarial seal of the notary therein named, which it is not convenient to here reproduce;) they the said Henry P. Dimond and Frederick A. Hyde then and there, to wit, at the several times and at the places of so presenting the said letter and causing the said document to be transmitted to the said Commissioner of the said General Land Office, as in this count of this indictment set forth, well knowing the contents of the same letter and document respectively, and well

knowing that the same respectively pertained to, and were so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

30. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the thirty-first day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count  
69 of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of public lands aforesaid, that is to say, the lands lying in the Carson City land district, in the state of Nevada, known and described as the northwest quarter of the southeast quarter of section seventeen, in Township thirty-nine north, Range fifty-three east, (reference being had to the Mount Diablo Meridian and base line,) containing forty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of California, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the San Jacinto Forest Reserve, in the said state of California, and known and described as the northwest quarter of the northwest quarter of section sixteen, in Township ten south, Range eight east, (reference being had to the San Bernardino Meridian and base line,) containing forty acres, the said Henry P. Dimonds, afterwards, to wit, on the said thirty-first day of December, in the year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Colum-

bia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

"R"

DEC. 31, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke, in the matter of his Forest Reserve Lieu  
70 Selection No. 4586, for the N. W.  $\frac{1}{4}$  S. E.  $\frac{1}{4}$  of Sec. 17, T. 39 N., R. 53 E., M. D. M., Carson City, Nev. in lieu of the N. W.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  of Sec. 16, T. 10 S., R. 8 E., S. B. M., Los Angeles, Cal. and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

31. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the thirty-first day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the

object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of public lands aforesaid, that is to say, the lands lying in the Carson City land district, in the state of Nevada, known and described as the northwest quarter of the northwest quarter of section twenty, in Township thirty-nine north, Range fifty-three east, (reference being had to the Mount Diablo Meridian and base line,) containing forty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A.

Hyde and John A. Benson, from the said state of California,  
 71 in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the San Jacinto Forest Reserve, in the said state of California, and known and described as the southwest quarter of the northwest quarter of section sixteen, in Township ten south, Range eight east, (reference being had to the San Bernardino Meridian and base line,) containing forty acres, the said Henry P. Dimond, afterwards, to wit, on the said thirty-first day of December, in the same year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
 Attorney at Law,  
 Glover Building, 1419 F Street N. W.,  
 Washington, D. C.

"R"

DEC. 31, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke, in the matter of his Forest Reserve Lien Selection No. 4588, for the N. W.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  of Sec. 20, T. 39 N., R. 53 E., M. D. M., Carson City, Nev. in lieu of the S. W.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  of Sec. 16, T. 10 S., R. 8 E., S. B. M., Los Angeles, Cal. and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of

the said United States, and contrary to the form of the statute of the same in such case made and provided.

32. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the eleventh day of December, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included

72 within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to defraud the said United States out of the possession and use of and the title to certain tracts of the public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Vancouver land district, in the state of Washington, which, when surveyed, would be known and described as the west half of the southwest quarter of section three, all of section four, the east half, and the east half of the southwest quarter, of section five, the east half, and the east half of the northwest quarter, of section eight, the northeast quarter of the northeast quarter, the west half of the northeast quarter, the west half, and the northwest quarter of the southeast quarter, of section nine, the southwest quarter of the northwest quarter, the southwest quarter, and the southwest quarter of the southeast quarter, of section fifteen, the west half of section sixteen, the northeast quarter, the south half of the northwest quarter, the north half of the southwest quarter, the southeast quarter of the southwest quarter, the north half of the southeast quarter, and the southeast quarter of the southeast quarter, of section seventeen, the east half of the northeast quarter, the southwest quarter of the northeast quarter, and the northeast quarter of the southeast quarter, of section twenty, and the north half, the north half of the southwest quarter, and the north half of the southeast quarter, of section twenty-one, all in Township eight north, Range six east, (reference being had to the Willamette Meridian and base line,) containing in all three thousand and six hundred and eighty acres, then lately before selected, in the name of one Isaac Liebes, by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then

obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of California, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and known and described as the east half, the northwest quarter, and the southwest quarter of the southwest quarter, of section sixteen, Township five north, Range twenty east, and the northeast quarter of the northeast quarter, the southwest quarter of the northeast quarter, and the northwest quarter of the southwest quarter, of section sixteen, in Township seventeen south, Range thirty-three east, (reference being had to the Mount Diablo Meridian and base line,) the east half, the east half of the northwest quarter, the northwest quarter of the northwest quarter, and the southwest quarter, of section sixteen, in Township four north, Range fourteen west, the east half of the northwest quarter, the northwest quarter of the northwest quarter, and the northeast quarter of the southwest quarter, of section sixteen, in Township four north, Range fifteen west, the north half of section thirty-six, in Township five north, Range fourteen west, all of sections sixteen and thirty-six, in Township five north, Range fifteen west, and the west half of section sixteen and the west half of section thirty-six, in Township five north, Range sixteen west, (reference being had to the San Bernardino Meridian and base line,) containing in all three thousand and six hundred and eighty acres, and then lying within the limits of certain forest reserves then lately before established under the laws of the said United States,—that is to say, the lands described as being in the said Township five north, Range twenty east, (reference being had to the Mount Diablo Meridian and base line,) lying within the Stanislaus Forest Reserve, in the said state of California, the lands described as being in the said Township seventeen south, Range thirty-three east, (reference being had to the said Mount Diablo Meridian and base line,) lying within the Sierra Forest Reserve, in the said State of California, and the lands described with reference to the said San Bernardino Meridian and base line lying within the Pine Mountain and Zaca Lake Forest Reserve, in the said state of California,—the said Henry P. Dimond, afterwards, to wit, on the said eleventh day of December, in the same year of our Lord nineteen hundred and one, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

DEC. 11, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Isaac Liebes in the matter of Forest Reserve Lien Selection No. 3030, under Act of June 4, 1897, for certain land in Sections 4, 5, 8, 9, 15,

16, 17, 20 and 21, T. 8 N., R. 6 E., W. M., Washington, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,

*Attorney for Isaac Liebes.*

he the said Henry P. Dimond, then and there, to wit, at the time and place when and where he so as aforesaid presented the said letter to the said Commissioner of the said General Land Office, well knowing the contents of the same letter, and well knowing that the same pertained to, and was so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

33. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the eighth day of December, in the year — our Lord nineteen hundred and two,

74 and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, a certain tract of the public lands aforesaid, that is to say, the lands lying in the Pueblo land district, in the state of Colorado, known and described as the southwest quarter of the northwest quarter of section thirty-three, in Township twenty-six south, Range fifty-six west, (reference being had to the Sixth Principal Meridian and base line,) containing forty acres, then lately before selected, in the name of one Crawford W. Clarke, (under the designation of C. W. Clarke,) by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of California, in pursuance of the same fraudulent practice and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said

United States, to wit, the Pine Mountain and Zaca Lake Forest Reserve, in the said state of California, and known and described as the southeast quarter of the southwest quarter of section thirty-six, in Township six north, Range twenty-three west, (reference being had to the San Bernardino Meridian and base line,) containing forty acres, the said Henry P. Dimond, afterwards, to wit, on the said eighth day of December, in the same year of our Lord nineteen hundred and two, and during the said period, unlawfully did transmit by mail of the said United States, from the city of San Francisco, in the said state of California, to the then Commissioner of the General Land Office of the said United States, at Washington aforesaid, in the said District of Columbia, a certain other letter, to wit, a letter of the tenor following:

75

Codes:

Western Union  
Anglo-American

—  
Cable address:  
"Contax"

Henry P. Dimond,  
Attorney at Law,  
415 Montgomery St., San Francisco.

R.

DECEMBER 8, 1902.

Honorable Binger Hermann, Commissioner General Land Office,  
Washington, D. C.

SIR: I have the honor to file herewith, in the matter of the Forest Lien Selection of C. W. Clarke, No. 2428, S. W.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  Sec. 33, T. 26 S., R. 56 W., 6th P. M., and in compliance with your letter "R" of October 1st, 1902, the affidavit of A. T. Hines as to the non-mineral and non-saline character and non-occupancy of the land selected, and would respectfully request that the selection be made the subject of early examination with a view to approval.

Very respectfully,

HENRY P. DIMOND,

*Attorney for C. W. Clarke.*

Enc.

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the tract of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the sixth day of March, in the year of our Lord nineteen hundred and three, and during the said period, unlawfully did transmit by mail of the said United States, from the said city of San Francisco, in the said state of California, to the then Commissioner of the said General Land Office, at Washington aforesaid, in the said District of Columbia, a certain other letter, to wit, a letter of the tenor following:



Codes:  
Western Union  
Anglo-American

Cable Address:  
"Contax"

Henry P. Dimond,  
Attorney at Law,  
415 Montgomery St., San Francisco.

"R"

MARCH 6, 1903.

Hon. W. A. Richards, Commissioner of the General Land Office,  
Washington, D. C.

SIR: I desire, in behalf of C. W. Clarke, in the matter of his forest reserve lieu selection No. 2428 for the S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 33, T. 26 S., R. 56 W. 6th P. M. in lieu of S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 36, T. 6 N., R. 23 W., S. B. M. to call your attention to the fact that said selection has been on file in your office since May, 1900, and ask that the same be made the subject of an early examination with a view to approval.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for C. W. Clarke.*

he the said Henry P. Dimond then and there, to wit, at the several times and at the place of so transmitting the several letters in this count of this indictment mentioned, to the said Commissioners of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

34. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the thirtieth day of January, in the year of our Lord nineteen hundred and two, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such pos-

session, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, certain tracts of the public lands aforesaid, that is to say, the lands, then unsurveyed, lying in the Vancouver land district, in the state of Washington, which, when surveyed, would be known and described as the north half, the north half of the southeast quarter, and the north half of the southwest quarter, of section twenty, the northeast quarter, and the northwest quarter, of section thirty, in Township eleven north, Range five east, and the west half of section thirty-two, in Township eleven north, Range four east, (reference being had to the Willamette Meridian and base line,) containing eleven hundred and twenty acres, then lately before selected, in the name of F. A. Hyde & Co., by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, in lieu of certain school lands before then obtained, by the said Frederick A. Hyde and John A. Benson, from the said state of California, in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth, and then lying within the limits of a certain forest reserve then lately before established under the laws of the said United States, to wit, the Pine Mountain and Zaca Lake Forest Reserve, in the said state of California, and known and described as section sixteen and the west half, and the southeast quarter, of section thirty-six, in Township nine north, Range twenty-

77 eight west, (reference being had to the San Bernardino Meridian and base line,) containing eleven hundred and twenty acres, the said Henry P. Dimond, afterwards, to wit, on the said thirtieth day of January, in the year of our Lord nineteen hundred and two, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the then Commissioner of the General Land Office of the said United States a certain letter, to wit, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.  
Washington, D. C.

"R"

JANUARY 30, 1902.

Hon. Binger Hermann, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of F. A. Hyde & Company, in the matter of their Forest Reserve Lieu Selection No. 3029, for lands in Secs. 20 & 30, T. 11 N., R. 5 E., and 32, T. 11 N., R. 4 E., W. M., Vancouver, Washington, in lieu of lands in Sections 16 and 36, T. 9 N., R. 28 W., S. B. M., California, Pine Mtn. & Zaca Lake Forest Reserve, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde & Company.*

and that, further in pursuance of the said unlawful conspiracy, combination, confederation and agreement in this count of this indictment mentioned, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title, to the tracts of public lands in this count described, the said Henry P. Dimond, afterwards, to wit, on the nineteenth day of March, in the same year of our Lord nineteen hundred and two, and during the period mentioned in the said first count of this indictment, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Commissioner of the said General Land Office a certain other letter, that is to say, a letter of the tenor following:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.  
Washington, D. C.

"R"

MARCH 19, 1902.

Hon. Binger Herman, Commissioner of the General Land Office,

SIR: I have the honor to file herewith in behalf of F. A. Hyde & Co., in the matter of its Forest Lieu Selection No. 3029, Act of June 4, 1897, (30 Stats., 36), the following papers, to wit: *Appointment of Agent to Post Notices on Land, Waiver of Cost of Publication, Supplemental Affidavit (Non-mineral, Non-occupancy and Non-saline)*, of A. S. Moore, covering period from March 29, 1900, to March 3, 1902, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde & Co.*

he the said Henry P. Dimond then and there, to wit, at the several times and at the place of so presenting the several letters in this count of this indictment mentioned, to the said Commissioner of the said General Land Office, well knowing the contents of each of the same letters, and well knowing that the same respectively pertained to, and were so presented in pursuance and to effect the object of, the said unlawful conspiracy, combination, confederation and agreement: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

35. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twenty-eighth day of May, in the year of our Lord nineteen hundred and two, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts

of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the several tracts of public lands mentioned and described in the several counts of this indictment from the first to the thirty-fourth count, both inclusive, which had been and were to be selected, at the times respectively mentioned in those counts, in the divers names and under the divers designations in the said several counts mentioned, by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, as in the said counts set forth, in lieu of the school lands respectively mentioned and described in the same counts as being lands obtained, by the said Frederick A. Hyde and John A. Benson, from the said states of California and Oregon, in pursuance of the same fraudulent practice, in the manner and *and* by the means in the said counts set forth, and respectively lying within the limits of the respective forest reserves in those counts mentioned, established, under the laws of the said United States in that behalf, in the states of California and Oregon, as in the said several counts set forth, the said John A. Benson, afterwards, to wit, on the said twenty-eighth day of May, in the same year of our Lord nineteen hundred and two, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did

79 pay to the said Woodford D. Harlan mentioned in the said first count a large sum of money, to wit, the sum of fifty dollars, in lawful moneys of the said United States, of kinds and denominations to the said grand jurors unknown: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

36. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the fifteenth day of June, in the year of our Lord nineteen hundred and two, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the

limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the several tracts of public lands mentioned and described in the several counts of this indictment from the first to the thirty-fourth count, both inclusive, which had been and were to be selected, at the times respectively mentioned in those counts, in the divers names and under the divers designations in the said several counts mentioned, by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, as in the said counts set forth, in lieu of the school lands respectively mentioned and described in the same counts as being lands obtained, by the said Frederick A. Hyde and John A. Benson, from the said states of California and Oregon, in pursuance of the same fraudulent practice, in the manner and by the means in the said counts set forth, and respectively lying within the limits of the respective forest reserves in those counts mentioned, established, under the laws of the said United States in that behalf, in the states of California and Oregon, as in the said several counts set forth, the said John A. Benson, afterwards, to wit, on the said fifteenth day of June, in the same year of our Lord nineteen hundred and two, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did pay to the said Woodford D. Harlan mentioned in the said first count a large

80 sum of money, to wit, the sum of one hundred dollars, in lawful moneys of the said United States, of kinds and denominations to the said grand jurors unknown: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

37. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the fifteenth day of March, in the year of our Lord nineteen hundred and three, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by

means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the several tracts of public lands mentioned and described in the several counts of this indictment from the first to the thirty-fourth count, both inclusive, which had been and were to be selected, at the times respectively mentioned in those counts, in the divers names and under the divers designations in the said several counts mentioned, by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, as in the said counts set forth, in lieu of the school lands respectively mentioned and described in the same counts as being lands obtained, by the said Frederick A. Hyde and John A. Benson, from the said states of California and Oregon, in pursuance of the same fraudulent practice, in the manner and by the means in the said counts set forth, and respectively lying within the limits of the respective forest reserves in those counts mentioned, established, under the laws of the said United States in that behalf, in the states of California and Oregon, as in the said several counts set forth, the said John A. Benson, afterwards, to wit, on the said fifteenth day of March, in the same year of our Lord nineteen hundred and three, and during the said period, at and within the said

81 District of Columbia, unlawfully did pay to the said Woodford D. Harlan mentioned in the said first count a large sum of money, to wit, the sum of two hundred dollars, in lawful moneys of the said United States, of kinds and denominations to the said grand jurors unknown: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

38. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twentieth day of March, in the year of our Lord nineteen hundred and three, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use

and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the several tracts of public lands mentioned and described in the several counts of this indictment from the first to the thirty-fourth count, both inclusive, which had been and were to be selected, at the times respectively mentioned in those counts, in the divers names and under the divers designations in the said several counts mentioned, by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, as in the said counts set forth, in lieu of the school lands respectively mentioned and described in the same counts as being lands obtained, by the said Frederick A. Hyde and John A. Benson, from the said states of California and Oregon, in pursuance of the same fraudulent practice, in the manner and by the means in the said counts set forth, and respectively lying within the limits of the respective forest reserves in those counts mentioned, established, under the laws of the said United States in that behalf, in the states of California and Oregon, as in the said several counts set forth, the said John A. Benson, afterwards, to wit, on the said twentieth day of March, in the same year of our Lord nineteen hundred and three, and during the said period, at and within the said District of Columbia, unlawfully did pay to the said Woodford D. Harlan mentioned

82 in the said first count a large sum of money, to wit, the sum of two hundred dollars, in lawful moneys of the said United States, of kinds and denominations to the said grand jurors unknown: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

39. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twenty-fifth day of March, in the year of our Lord nineteen hundred and three, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the



possession and use of and the title to, the several tracts of public lands mentioned and described in the several counts of this indictment from the first to the thirty-fourth count, both inclusive, which had been and were to be selected, at the times respectively mentioned in those counts, in the divers names and under the divers designations in the said several counts mentioned, by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, as in the said counts set forth, in lieu of the school lands respectively mentioned and described in the same counts as being lands obtained, by the said Frederick A. Hyde and John A. Benson, from the said states of California and Oregon, in pursuance of the same fraudulent practice, in the manner and by the means in the said counts set forth, and respectively lying within the limits of the respective forest reserves in those counts mentioned, established, under the laws of the said United States in that behalf, in the states of California and Oregon, as in the said several counts set forth, the said John A. Benson, afterwards, to wit, on the said twenty-fifth day of March, in the same year of our Lord nineteen hundred and three, and during the said period, at and within the said District of Columbia, unlawfully did pay to the said Woodford D. Harlan mentioned in the said first count a large sum of money, to wit, the sum of one hundred dollars, in lawful moneys of the said United States, of kinds and denominations to the said grand jurors unknown: Against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

40. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the eighteenth day of December, in the year of our Lord nineteen hundred and three, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the several tracts of public lands mentioned and described in the several counts of this indictment from the first to the thirty-fourth count, both inclusive,



which had been and were to be selected, at the times respectively mentioned in those counts, in the divers names and under the divers designations in the said several counts mentioned, by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice, as in the said counts set forth, in lieu of the school lands respectively mentioned and described in the same counts as being lands obtained, by the said Frederick A. Hyde and John A. Benson, from the said states of California and Oregon, in pursuance of the same fraudulent practice, in the manner and by the means in the said counts set forth, and respectively lying within the limits of the respective forest reserves in those counts mentioned, established, under the laws of the said United States in that behalf, in the states of California and Oregon, as in the said several counts set forth, the said John A. Benson, afterwards, to wit, on the said eighteenth day of December, in the same year of our Lord nineteen hundred and three, and during the said period, at Washington aforesaid, in the said District of Columbia, unlawfully did pay to the said Woodford D. Harlan mentioned in the said first count a large sum of money, to wit, the sum of two hundred dollars, in the form of four gold certificates of the denomination and value of fifty dollars each, lawful money of the said United States: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

41. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the twenty-fourth day of October, in the year of our Lord nineteen hundred and one, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the several tracts of public lands mentioned and described in the several counts of this indictment from the first to the thirty-fourth count, both inclusive, which had been and were to be selected, at the times respectively mentioned in those counts, in the divers names and under the divers designations in the said several counts mentioned, by and on behalf of the said Frederick A. Hyde and John A. Ben-

son, in pursuance of the said fraudulent practice, as in the said counts set forth, in lieu of the school lands respectively mentioned and described in the same counts as being lands obtained, by the said Frederick A. Hyde and John A. Benson, from the said states of California and Oregon, in pursuance of the same fraudulent practice, in the manner and by the means in the said counts set forth, and respectively lying within the limits of the respective forest reserves in those counts mentioned, established, under the laws of the said United States in that behalf, in the states of California and Oregon, as in the said several counts set forth, the said John A. Benson, afterwards, on divers days and at divers times during the said period to the said grand jurors unknown, unlawfully did give and pay to the said William E. Valk mentioned in the said first count, by sending the same by mail of the said United States from the city of San Francisco, in the state of California, directed to the

85 said William E. Valk at Laurel, in the state of Maryland, divers sums of lawful money of the said United States, of kinds, denominations and amounts respectively to the said grand jurors unknown, aggregating a large sum, to wit, the sum of fifteen hundred dollars: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

42. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, on the sixteenth day of December, in the year of our Lord nineteen hundred and three, and during the period mentioned in the first count of this indictment, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly and corruptly to defraud the said United States out of the possession and use of and the title to divers large tracts of the public lands of the said United States open and to be open to selection in lieu of lands included and to be included within the limits of forest reserves, established and to be established, under the laws of the said United States in that behalf, in the states of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating, for the profit, gain, use and benefit of themselves, as in the said first count set forth, such possession, use and title; and that, in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and to appropriate, and defraud the said United States out of the possession and use of and the title to, the several tracts of public lands mentioned and described in the several counts of this indictment from the first to the thirty-fourth count, both inclusive, which had been and were to be selected, at the times respectively mentioned in those counts, in the divers names and under the divers designations in the said several counts mentioned, by and on behalf of the said Frederick A. Hyde and John A. Benson, in pursuance of the said fraudulent practice,

as in the said counts set forth, in lieu of the school lands respectively mentioned and described in the same counts as being lands obtained, by the said Frederick A. Hyde and John A. Benson, from the said states of California and Oregon, in pursuance of the same fraudulent practice, in the manner and by the means in the said counts set forth, and respectively lying within the limits of the respective forest reserves in those counts mentioned, established, under the laws of the said United States in that behalf, in the states of California and Oregon, as in the said several counts set forth, the said John A. Benson, afterwards, to wit, on the said sixteenth day of December, in the same year of our Lord nineteen hundred and three, and during the said period, at Washington aforesaid in the said District of Columbia, unlawfully did pay to the said

86 William E. Valk mentioned in the said first count a large sum of money, to wit, the sum of one hundred dollars, in the form of four twenty-dollar gold certificates, one ten-dollar silver certificate and one ten-dollar United States note, lawful moneys of the said United States, a further description whereof is to the said grand jurors unknown: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

MORGAN H. BEACH,  
*Attorney of the United States  
 for the District of Columbia.*

87 [Endorsed:] No. 24141. In the Supreme Court of the District of Columbia. The United States of America v. Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider. Indictment. On Section 5440, R. S., U. S. (Conspiracy to defraud the United States.) A true bill. Henry W. Reed, foreman. Witnesses: Walter K. Slack, Marion L. Doyle, Charles A. Johnson, Belle A. Curtis, J. Knox Corbett, Woodford D. Harlan, William E. Valk, William J. Burns, D. Alexander, John McPhaul, Benjamin F. Allen, Grant I. Taggart, Thomas McCusker. Filed in open court Feb. 17, 1904. J. R. Young, clerk.

88 *Demurrer of Frederick A. Hyde.*

Filed November 13, 1905.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal. No. 24141.

UNITED STATES

VS.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND, and  
 JOOST H. SCHNEIDER.

The defendant, Frederick A. Hyde, says that the indictment and each count thereof is bad in substance.

R. GOLDEN DONALDSON,  
 A. S. WORTHINGTON,  
*Attorneys for Defendant Frederick A. Hyde.*

NOTE.—Among the matters of law to be argued in support of the foregoing demurrer are the following:

A. As to each of the counts in the indictment.

1st. The matters charged do not, if true, constitute any offense.

2nd. Several different alleged conspiracies are charged each being entirely independent of the other, wherefore the indictment and each count thereof is bad for duplicity.

89 3rd. The defendants are not given such a description of the charge intended to be made against them as will enable them to properly prepare their defense, or to avail themselves of a conviction or acquittal against a further prosecution for the same offense: nor is the court informed of the nature of the charge so as to enable it to decide whether the facts alleged are sufficient in law to support a conviction, if one should be had.

5th. The charges made are so prolix, involved, confused and uncertain that no ordinary jury could be expected to understand them.

B. As to each count of the indictment except the first.

The references in each of these counts to the first count are so ambiguous that it is impossible to determine what part or parts of the first count of the indictment were intended to be incorporated into the other counts, and with such ambiguous references omitted, none of these counts charge any offense.

R. GOLDEN DONALDSON,

A. S. WORTHINGTON,

*Attorneys for Defendant Frederick A. Hyde.*

90 Supreme Court of the District of Columbia.

JANUARY 2D, 1906.

The Court commences its Session at ten o'clock in the forenoon, by proclamation of the Marshal, pursuant to the rule of the Court, the Honorable Daniel Thew Wright, one of the Justices of the said Supreme Court presiding.

\* \* \* \* \*

No. 24141. Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES

VS.

FREDERICK A. HYDE and JOHN A. BENSON,

Come as well the Attorney of the United States as the defendants by their Attorneys Messrs. Frank H. Platt, A. S. Worthington and R. Golden Donaldson; and, thereupon, the defendants' demurrers to the indictment having been heretofore argued and submitted to the Court, it is considered by the Court that said demurrers be and they hereby are overruled and the defendants are ordered to appear before this Court to plead to the indictment herein pending against them.

Filed in Open Court January 2, 1906.

No. 24141. On Demurrer to the Indictment.

U. S.

v.

HYDE, BENSON, DIMOND, & SCHNEIDER.

The indictment embraces forty-two counts and covers ninety-six printed pages; it has been criticised by profound thoughtful judges and condemned by learned counsel; yet after all, the question whether this or any other criminal case or any series of cases can be of a nature such as to justify the encumbering of the records of a court with such a document, is a question of policy and propriety; the determination of which rests with the Grand Jury and the Public Prosecutors. A court cannot cast out indictments because the length of them is not agreeable nor the reading of them comfortable; if they are good enough to charge an offense, the discussion of how bad they may be in other respects is not profitable; but at the appropriate stage of the proceedings the court sees to it that no substantial right of a defendant is infringed through the submission to the jury of such a multiplicity of accusations as would confuse or mislead them.

The point first urged for the demurrer is, "The indictment is "fatally defective in that it improperly joins forty-two different and "independent conspiracies"—

92     Aside from statutory enactment on the subject, it has been always appropriate for pleaders to charge in separate counts, different offenses arising out of a series of acts or transactions, in order that the *res gestæ* of the matter might be submitted to the jury for them to decide whether the accused were guilty of this, that or the other crime according as the case developed upon the trial.

In practice, the question usually arises upon motion to require an election between counts; and the time usually found appropriate for this motion is at the close of the evidence for the prosecution, although no reason occurs to me why it might not be as well made at any other stage of the proceedings.

If the evidence for the prosecution has brought forward proof of separate and distinct offenses committed at different times, the prosecution is (in the absence of statute) required to elect upon which it will rely, and thus the accused is enabled to direct his defense against a single accusation; but if the evidence has dealt with different offenses all arising out of the one series of facts, the whole is submitted to the jury for them to say which, if any, crime has been committed; otherwise the pleader must at his peril, exactly forecast not only the facts which the trial would ultimately develop, but also the law which would turn out applicable to them.

But Sec. 1024 of the Revised Statutes of the United States has very materially broadened the field appropriate to be covered by a single indictment; it provides,

93 "When there are several charges against any person for  
"the same act or transaction, or for two or more acts or  
"transactions connected together, or for two or more acts or  
"transactions of the same class of crimes or offenses, which may be  
"properly joined, instead of having several indictments the whole  
"may be joined in one indictment in separate counts; and if two  
"or more indictments are found in such cases the court may order  
"them to be consolidated."

Therefore, even be it conceded that the indictment at bar charges in different counts forty-two *different* conspiracies, yet they may be joined under the statute. And upon the other hand, if it be concluded (as seems to me the fact) that the different counts each charge the same conspiracy but as of different dates, and each count setting forth an overt act different from the overt act set forth in any other count, then the joinder would be good even without the statute; for in that aspect there would be a charging of the same offense in forty-two different ways. So that in any event the joinder is proper; and being proper I understand no theory upon which a demurrer can avail against it.

If in a particular case it turns out that the accused will be prejudiced by proceeding to his defense upon a joinder which is in general proper, the remedy is to be found in invoking the discretionary power of the court to require an election as between counts; the very existence of this discretionary power is essentially predicated upon the propriety of the joinder as a matter of law; a demurrer invokes  
94 no discretionary power of the court, nor is the disposition of  
demurrers in anywise according to the court's discretion, but only according to the strict law of the matter; the question of the propriety of an election can be raised only by motion directly to the point.

It is urged next, that the plan adopted by the defendants was not susceptible of accomplishing a fraud upon the United States;—upon this question the Supreme Court has expressed itself, the indictment having been before it upon Habeas Corpus (*Hild v. Shine* 199 W. S. 62).

It is contended, "each count is fatally defective in that it fails to specify and describe the tracts of land to which the alleged conspiracy related." This proposition involves the predicate, that there can be no conspiracy to defraud the United States of public lands, unless the conspiracy be so insignificant as to be limited to a particular parcel concerning which, and which alone, the conspirators have distinctly and definitely agreed.

The indictment alleges,—

"did conspire to defraud the United States out of the title to diverse large tracts of the public lands"—and sets out further the means whereby the result was to be accomplished; it is as much susceptible of agreement between persons that they shall procure

"diverse large tracts" as it is possible for them to agree to procure a certain particular acre definitely selected in advance; and if persons agree upon a project of such scope and magnitude and of a nature so general as that they themselves can give expression to it only by the words "divers large tracts", then the want of particularity in the description of lands turns out to be the fault  
 95 of the conspiracy, and not of the pleader who so states it; it is his business to set out the particular conspiracy which existed, if there was one; if it was an agreement in general and indefinite terms, he must allege it in those terms; if it was an agreement limited to particular land definitely decided upon, he must describe those lands if he would set out that conspiracy.

If persons come together and say "we agree to defraud the United States out of diverse large tracts of land", it is one thing; if they say "we agree to defraud the United States out of Section 35 Tp. 23 Range 9 W. M. Lakeview Oregon", it is another thing; in either case the pleader must allege the agreement which was actually made if he expects any one to be tried for it; now this is what the pleader has done here; the indictment charges that the conspiracy was in fact so general as that it contemplated no particular lands; therefore if want of particularity is to be the subject of complaint, the complaint lodges against the conspiracy, not against the indictment.

In argument it was urged that the word "diverse" was of a sense so general as to indicate no definite thing; to this objection the answer is the same; that according to the indictment the defendants chose that word to express their agreement although they had at their disposal the whole vocabulary of the English language from which to select.

The contentions which are made against a so-called indefiniteness in the statement of certain of the means whereby the conspiracy was to have been carried out, must fall before the like reasoning; that while persons might have adopted means more definite in  
 96 those particular respects, yet the means which they are charged with having adopted were sufficient to have accomplished a fraud; if persons adopt means which are general or indefinite, this in nowise entitles them to complain against the accusation of it.

### *Point 3.*

Hereunder is contended that whereas no count subsequent to the first presents in detail a statement of the "means to be employed", that each is defective for want of such averments of reference and re-incorporation as are sufficient to carry the averments of the first count into the other counts.

It is to be observed that each subsequent count sets out the conspiracy in language identical with that of the first count upon the same subject; that while the first count sets out in detail the "means to be employed", the subsequent counts omit the detailed "means" and in place thereof adopt this phraseology:

"by obtaining from the said United States by means of the false "and fraudulent practices described in the first count."

By this language the pleader plainly refers only to the "means to be employed" as set forth in the first count; the language is therefore so definite as that it applies and refers only to the "means"; and while at first impression it may seem general, yet it is general only in the sense of embracing *all* of the "means" set out in the first count; therefore it really turns out particular and definite in that

97 it refers with certainty to *all* the means and not merely to some of them; if the pleader had averred "by means of *certain* of the practices set out in the first count", the reference would have been insufficient for want of indicating *which*; but in as much as the language employed does with certainty embrace *all*, neither more nor less, it is sufficient to draw *all* the "means" from one count to the other.

The demurrers must be overruled.

WRIGHT.

*Order Allowing Special Appeal.*

Filed January 25, 1906.

Court of Appeals of the District of Columbia, January Term, 1906.

No. 239. Original Docket.

Criminal. No. 24141.

FREDERICK A. HYDE and JOHN A. BENSON, Petitioners,

vs.

UNITED STATES.

In view of the special circumstances of this case, and without intending to establish a precedent to be followed in subsequent cases, we have concluded to allow the special appeal as prayed by the defendants, Frederick A. Hyde and John A. Benson, and it is so ordered.

SETH SHEPARD,

*Chief Justice.*

C. H. DUELL,

*Associate Justice.*

January 25, 1906.

A true Copy.

Test:

[SEAL.]

HENRY W. HODGES,

*Clerk of the Court of Appeals of the District of Columbia.*



Filed April 27, 1906.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable  
the Justices of the Supreme Court of the District of  
[SEAL.] Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between United States, plaintiff and Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider, Criminal No. 24,141 wherein the judgment of the said Supreme Court entered in said cause on the 2d day of January, A. D. 1906, is in the following words, viz:

"Come as well the Attorney of the United States as the defendants by their Attorneys Messrs. Frank H. Platt, A. S. Worthington and R. Golden Donaldson; and, thereupon, the defendants' demurrers to the indictment having been heretofore argued and submitted to the Court, it is considered by the Court that said demurrers be and they hereby are overruled and the defendants are ordered to appear before this Court to plead to the indictment herein pending against them."

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, prayed by Frederick A. Hyde and John A. Benson whereon the United States was made the party appellee agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of April, in the year of our Lord one thousand nine hundred and six, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby, affirmed; and it is further ordered that this cause be, and the same is hereby remanded to the said Supreme Court for further proceedings according to law.

APRIL 6, 1906.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and judgment of this Court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Seth Shepard, Chief Justice of said Court of Appeals, the 26th day of April in the year of our Lord one thousand nine hundred and six.

HENRY W. HODGES,  
*Clerk of the Court of Appeals  
of the District of Columbia.*

100

*Motion for Bill of Particulars and Affidavit.*

Filed July 9, 1906.

In the Supreme Court of the District of Columbia.

Criminal. No. 24141.

UNITED STATES OF AMERICA

against

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND, and  
JOOST H. SCHNEIDER.

UNITED STATES OF AMERICA,

*Northern District of California, ss:*

John A. Benson, being duly sworn, deposes and says:

That he is one of the defendants in the above entitled case and resides in the City of San Francisco, State of California.

That the indictment herein has been construed by this Court as charging a conspiracy by and between the defendants above named to defraud the United States out of divers large tracts of the public lands, by exchanging therefor fraudulent titles to school lands to be obtained by the defendants from the States of California and Oregon.

The indictment charges forty-two different and distinct conspiracies, each alleged to have been formed in Washington, District of Columbia, on different dates from October 24th, 1901, to December 18th, 1903.

Deponent verily believes and charges that the Government does not claim and will not attempt to prove an express agreement or conspiracy, either oral or written, on the part of the defendants, or any of them, for the purposes alleged in the indictment, but intends to offer as proof of the alleged conspiracy only circumstantial evidence from which it will be sought to draw the inference that a conspiracy was formed. And deponent verily believes and charges that the evidence of the government to prove the alleged conspiracy will consist largely, if not wholly, of facts and circumstances connected with transactions in the State School lands of California and Oregon, and transactions in public lands of the United States under the Forest Reserve Acts, which transactions were either had by one or more of the defendants, or by other persons believed by the government to be acting as agents or attorneys for one or more of the defendants.

The indictment charges that the alleged fraudulent practice by which the defendants conspired to obtain titles to State School lands within the Forest reservations and exchange the same with the United States for public lands outside the Forest reservations, included the following:

1. The obtaining of title to State School lands fraudulently by filing with the State authorities applications to purchase and assign-

ments of such applications and of the certificates of purchase, either made in the names of fictitious persons or made in the names of real persons not qualified under the State laws to purchase such lands, or not desiring to purchase the same for their own use and benefit, and the supporting of such applications by forged and false affidavits.

2. Causing the State land titles so obtained in the names of fictitious persons to be relinquished, assigned, transferred and conveyed to the United States by false and forged relinquishments, assignments and conveyances, and causing the titles so fraudulently obtained in the names of real persons to be relinquished and conveyed by such real persons to the United States either directly, or indirectly through defendant Hyde or the agents of the defendants.

3. The procuring from the United States in exchange for such School lands public lands of the United States selected on behalf of the defendants in the names of such fictitious or real persons, or in the names of Frederick A. Hyde, C. W. Clarke, or other persons named in the indictment.

4. Exchanging with the United States for public lands titles to School lands fraudulently obtained from the States of California and Oregon prior to the period named in the indictment.

5. Inducing and procuring Harlan and Valk, clerks in the General Land Office, and taking advantage of the fact that defendants had previously induced and procured said clerks, to furnish defendants information as to the status of their pending business in the Land Office and to expedite the business of defendants pending in said Land Office.

6. Inducing and procuring Allen and Taggart, Forestry officers of the United States, and taking advantage of the fact that defendants had previously induced and procured said officers, to furnish defendants information gathered by said officers in their official capacity, and to transmit to their superior officers reports and recommendations prepared for them by the defendants.

7. Procuring by means not stated the establishment of Forest Reserves under the laws of the United States in such localities in California and Oregon as would best effect the object of the alleged conspiracy.

8. Various action- by Dimond and Schneider in aid of the alleged conspiracy.

No count of the indictment charges that the alleged conspiracy was to defraud the United States out of any particular or specified tract of public land, or to exchange with the United States for public lands any specified tract of school lands. The charge as construed and described by the Court of Appeals of the District of Columbia is of a gigantic conspiracy to defraud the United States out of public lands in general by exchanging therefor State School lands in general—a conspiracy so extensive that the alleged conspirators had no specific lands in mind.

Under this indictment it is open to the Government therefore to put in evidence any applications for school lands in the States of

California and Oregon, any assignments of such applications, and any assignments of the certificates of purchase of such school lands which the Government may believe to be fraudulent, false or fictitious. The Government will not be restricted to proof of transactions in school lands by the defendants in their own names, for the indictment alleges that the school lands were to be obtained in the names of other persons, and does not give any of the names in which such applications were to be made. The Government will not be

restricted to proof of State land applications made at or about  
104 the dates of the alleged information of the 42 different conspiracies, but may prove applications for school lands made many years previously to the earliest date named in the indictment, for the indictment alleges that it was a part of the conspiracy to exchange for public lands titles to school lands fraudulently obtained prior to the period named in the indictment.

It will be open to the Government also to put in evidence any relinquishments, assignments or conveyances of school lands in California and Oregon to the United States by any person on or after October 24th, 1901, which the Government believes was a forged or false conveyance, or believes was made at the instigation or in the interest of the defendants, for the indictment does not allege that these relinquishments, and conveyances to the United States were to be made in the names of the defendants solely, but, on the contrary, alleges that such relinquishments and conveyances were to be made in the names of fictitious persons and of real persons unnamed.

It will be open to the Government also to put in evidence any selections of public land under the Forest Reserve Acts on or after October 24th, 1901, in whatever name such selections may have been made, which the Government believes to have been made by an agent of or in the interest of the defendants, for the indictment does not allege that the selections of public lands were to be made in the names of the defendants, but alleges on the contrary, that they were to be made in the names of fictitious persons or real persons unnamed, as well as in the names of Frederick A. Hyde  
105 and other named persons.

Deponent has not the slightest knowledge or information as to the evidence which the Government will introduce, or upon which it will rely, or as to what transactions in State School lands or United States Forest Reserve Lands the Government will seek to prove irregular and fraudulent, for the purpose of establishing the alleged conspiracy. Unless the Government is required to furnish particulars of the evidence upon which it will rely as proof of the alleged conspiracy the substantial rights of deponent will be seriously prejudiced, and deponent will be absolutely prevented from preparing or making any defense.

Deponent has been interested in the acquisition of many titles to school lands in the State of California from the patentees and holders of certificates of purchase thereof, and the exchange of such school lands with the United States for public lands outside the Forest Reserves, since the enactment of the Forest Reserve Act of 1897, the number of such transactions in which deponent has been interested being several hundred. The documentary evidence relating to de-

ponent's transactions in such lands and lands with which he is alleged to have had some connection must be obtained from the Land Offices and other public offices in the States of California and Oregon, and practically all the persons with whom deponent dealt in such transactions, and persons with whom he is alleged to have had transactions, all of which persons are indispensable witnesses to prove the good faith and regularity of the transactions, are residents of the States of California and Oregon. In order to be properly prepared to meet the evidence which the Government may introduce at the trial it would be necessary for deponent, unless a bill of particulars is furnished by the Government, to produce as to each and every transaction in such State School lands in which deponent has been (or is alleged to have been) interested directly or indirectly, certified copies of the applications, assignments and affidavits filed with the State authorities, and to take the depositions of or produce in Washington personally as witnesses the applicants, affiants, assignees and patentees whose names appear in the chains of title to such School lands, and the notaries public before whom all such documents were sworn or acknowledged. All of such documentary evidence would be indispensable and all said persons would be necessary and material witnesses to prove that the applications to the States for the purchase of such school lands were made in good faith by the applicants; that the applicants were not fictitious persons; that they were qualified to purchase and did purchase for their own use and benefit, and not in the interest of the deponent, or any other person; that the subsequent sales and assignments by such applicants were valid and regular, and that deponent had no improper or unlawful connection with any of the transactions in such school lands.

Deponent's said transactions in such School lands have been so numerous as aforesaid, that it would be utterly impossible to procure the documentary evidence and the testimony of the necessary witnesses as aforesaid, to prove on the trial of this case the regularity and validity from its inception of every title which deponent has so acquired, or in which deponent has been interested.

But even all the evidence as aforesaid as to the School land titles in which deponent has actually been interested, directly or indirectly, would not constitute a sufficient preparation to meet the charges made in this indictment, since the Government may offer proof of any application for the purchase of School lands in California and Oregon from the year 1897 to December 1903 by any person, the subsequent transfers and conveyances thereof, the relinquishment and conveyance thereof to the United States by any person, and any selections of public lands under the Forest Reserve Acts in lieu of State School lands by any person, upon the unfounded suspicion or belief that deponent was interested therein. Therefore, to meet the evidence which may be introduced by the Government under this indictment it would be necessary for deponent to be prepared at the trial to show by competent proof that he had no interest in or connection with such land transactions, and this proof deponent cannot be prepared to make without knowledge or information in advance of the trial as to what matters and transactions the

Government will put in evidence to establish the alleged conspiracy.

Certain specific and described tracts of School land in California and Oregon, and certain tracts of selected or lieu land are set forth as part of the overt acts in the first 34 counts of the indictment. Deponent deposes and says: That he was in no way improperly connected with any of the transactions described in said overt acts, and that unless the Government is required to elect the counts and give the particulars of the transactions upon which it will rely

108 deponent must procure the depositions of witnesses and the necessary documentary evidence to prove that he had no improper connection with said transactions, and that the titles to said lands described in the said overt acts were valid and regular. The applications for the purchase of the School lands described in the said overt acts were made, as deponent is informed and believes, by over seventy different persons, and said applications were sworn to before a large number of different notaries public. It is a fact and deponent desires the testimony of each of said applicants and each of said notaries public in order to show that deponent was in no way connected, either directly or indirectly, with the procuring or filing of said applications, and that none of the charges of the indictment are true as to the tracts of School land and selected land described in the indictment. Each of said applicants and each of said notaries public is a necessary and material witness for deponent at the trial of this case, and each of them resides more than 3000 miles distant from the District of Columbia, and deponent cannot secure their personal attendance at the trial. To take the depositions of all said persons will require a long period of time and involve enormous expense. In addition to the aforesaid witnesses it will be necessary for deponent, in relation to the tracts of land described in said overt acts, to obtain the testimony of the County Clerks and County Records of at least ten different counties in California and Oregon, and it will be further necessary to ascertain the names of the transferees of all said applicants and to obtain their testimony in order

109 therewith. Certified copies of the records necessary to present deponent's case in relation to the tracts of land described in the overt acts, would alone cost deponent several thousand dollars.

To secure the evidence necessary and essential as aforesaid, in connection with the overt acts alone involves a burden and expense almost, if not quite, impossible for deponent to sustain.

Aside from the overt acts in the various counts of the indictment, there is no specification or description of the tracts of land as to which the Government will offer proof, and it is utterly impossible for deponent to prepare any defense without information as to the particulars of the Government's evidence and without an election by the Government as to the counts and charges on which it will rely. Without such election and particulars deponent will be obliged to go to trial without notice of the specific charges which will be made against him, and without any adequate preparation to defend, and deponent will inevitably be taken by surprise and seriously prejudiced in the trial of the case. Moreover, a voluminous amount of documentary evidence in the possession of deponent prior to the

Eighteenth day of April, 1906, was consumed by fire upon that day, and deponent has thus been deprived of the means of combating much of the testimony which may be offered by the Government.

Wherefore deponent prays that an order of this Court may be made requiring the Government to furnish a bill of particulars of the evidence intended to be relied on and requiring the Government to elect the count or counts of the indictment on which it  
110 will rely

JOHN A. BENSON.

Sworn to before me this 28th day of June, 1906.

[SEAL.]

FLORA HALL,

*Notary Public in and for the City and County  
of San Francisco, State of California.*

111

*Affidavit of Defendant Hyde.*

Filed Jul- 11, 1906.

In the Supreme Court of the District of Columbia.

No. 24141. Criminal Docket.

THE UNITED STATES

vs.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND, and  
JOOST H. SCHNEIDER.

DISTRICT OF COLUMBIA, ss:

I, Frederic A. Hyde, one of the defendants in the above entitled cause, on oath say as follows:

As to the several parcels of land described in the concluding paragraph of the first count of the indictment in this case as lying within the limits of the Cascade Range Forest Reserve in the State of Oregon, and others lying within the limits of the Sierra Forest Reserve, in the State of California, this defendant does not know, and, except through the instrumentality of this Honorable Court, has no means of ascertaining whether it is intended by the Government at the trial of this case to claim that said parcels or any of them were obtained from said States by means of using fictitious names by applying to the said State for the same in the names of persons not qualified to receive the same, or by applying for

112 the same in the names of qualified persons under contract to convey the same to this defendant or one of his co-defendants, or whether it will be claimed by the Government that said lands were obtained from the said States in some other and different way from any of those just described. Nor does this defendant know, nor has he any means of knowing save through the interposition of this Honorable Court, whether the Government expects to prove at the trial of this case that said parcels of land or any of them were ob-

tained by the direct intervention of this defendant or through some third person or persons, and, if the latter, the names of such person or persons.

As to the several tracts of land described in each of the counts of said indictment numbered from 2 to 31, both inclusive, and as to which it is charged that the same were improperly obtained from the State of Oregon or the State of California, this defendant does not know and has no means of ascertaining, save through the instrumentality of this Honorable Court, whether the Government intends at the trial of this case to claim that the same were obtained from the States of Oregon and California respectively by one or the other of the means described in the foregoing paragraph of this affidavit or by some other means.

The counts of said indictment numbered from 1 to 32, inclusive, refer to about sixty-eight parcels of land as having been obtained from the State of Oregon or the State of California, as the case may be, by fraud. On information from his counsel and on belief, this defendant says that the attorney of the United States for the District of Columbia has informed counsel for this defendant that at 113 the trial of this case the Government expects to offer testimony tending to show that a large number of tracts of land not described or referred to in any count of said indictment were obtained from the State of Oregon or the State of California by fraud, and as to such tracts or parcels this defendant has no means of knowing even what the tracts are. Much less does he know or has he any means of ascertaining by what particular species of fraud it will be claimed at the trial they were obtained.

To produce at the trial of this case witnesses having knowledge of the facts relating to all the several parcels of State lands described in the different counts of said indictment would cost many thousands of dollars, as under the laws of the State of California one person can enter not exceeding Six hundred and forty acres, and under the laws of the State of Oregon one person can enter not exceeding three hundred and twenty acres, and the titles which were surrendered to the Government and form the basis of the selections mentioned in the indictment, and the other titles as to which proof may be offered as before stated, must necessarily have been transferred from these many purchasers to the persons who selected other lands in lieu thereof. How many witnesses may have to be examined, or how much expense may have to be incurred in meeting the claims of the Government as to the tracts of land not described in any count of the indictment but upon which the Government intends to offer testimony, this defendant manifestly cannot even make an approximate estimate.

114 Even if this defendant were fully advised as to the several parcels of land not mentioned in the indictment as to which the Government expects to offer testimony at the trial, and even if he were advised further as to just what the Government will claim in reference to the several tracts of land, whether mentioned in the indictment or not, it will be impossible to bring to Washington all the



witnesses who will be required on behalf of the defendant, on account of the enormous expense which would thereby be incurred.

This defendant resides in California. All of the 16th and 36th sections which it is alleged in the indictment were procured by fraudulent means are situated in the States of California and Oregon, and all transactions relative to the acquisition of the title to such lands occurred in those States, respectively, and all or nearly all of the lands which, in said indictment, are alleged to have been selected in lieu of said 16th and 36th sections are situated in the States of Washington and California, and all or nearly all, of the proceedings and transactions by which such titles are alleged to have been acquired occurred in said States.

All of the witnesses whom it may be necessary for the defendant to examine on his behalf and in his own defense herein reside on the Pacific Coast, and are necessary and material to this defendant.

Defendant has been engaged in the business of locating and securing title to public lands of the United States on the Pacific  
115 coast, either for himself or for his clients or customers, for the past 34 years and over. During that time he has had business and transactions with thousands of different persons, involving thousands of different tracts of land; and defendant has particularly made it his business to act as attorney for parties who were seeking to purchase the 16th and 36th sections of school lands in the State of California, and sometimes, more rarely, in the State of Oregon.

This defendant has no means of knowing which, if any, of his said transactions may be called in question at the trial of this case.

Wherefore, the defendant respectfully prays:

1. That the Government shall be required to elect upon which count or counts of the indictment it will proceed with the further prosecution of this case, and that in making such election the Government may be confined to such a number of counts or transactions as the Court may deem reasonable and proper.

2. That when such election shall be made, or within a reasonable time, if the Government be not required to elect, the Government shall file in this case a bill of particulars, setting forth as to each parcel of land which the Government shall claim at the trial was obtained from the State of Oregon and the State of California by fraud, a proper description of said parcel and a specific statement showing particularly whether it is intended, as to the same, to claim it was  
obtained from the State in the name of a fictitious person,

116 and if so, to give such fictitious name, or whether it was obtained in the name of a person not qualified to receive such lands from the State, and if so, to give his name, or whether it was obtained by a person qualified to obtain it upon false statements, and if so, the name of such person, and in what respect the statements were false; and, generally, to inform the defendant as to the character of the alleged fraud upon which the Government at the trial will rely.

3. That a commission may issue out of this court to a commissioner or commissioners appointed by the court to take orally the

depositions of witnesses on behalf of this defendant, and that in the order directing the issuance of such commission, the Court shall specify for what length of time notice shall be given to the District Attorney before such witnesses shall be examined.

FREDERIC A. HYDE.

Subscribed and sworn to before me this 27th day of June, A. D. 1906.

[SEAL.]

ALBERT C. WELLS,  
*Notary Public, D. C.*

A. S. WORTHINGTON,  
R. GOLDEN DONALDSON,  
*Att'ys for Def't Hyde.*

117 Supreme Court of the District of Columbia.

TUESDAY, July 24, 1906.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

\* \* \* \* \*

No. 24141. Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES

vs.

FREDERICK A. HYDE and JOHN A. BENSON.

Come as well the Attorney of the United States as the defendants by their Attorneys Messrs. A. S. Worthington and Frank H. Platt; and, thereupon, upon consideration of the affidavit and petition of the defendant, John A. Benson, filed herein on the 9th day of July, 1906, and the affidavit and petition of the defendant, Frederick A. Hyde, filed herein on the 11th day of July, 1906, as well as the affidavit of Daniel W. Baker, filed herein on the 24th day of July, 1906, and after hearing argument by counsel for said defendants and for the United States, it is, this 24th day of July, 1906, ordered that the petitions of said Benson and Hyde to require the Government to make an election in this case, be, and they are hereby, denied.

And it is further ordered that the Attorney of the United States for the District of Columbia shall file herein on or before the 4th day of August, 1906, a bill of particulars in which he shall give a full description of all the parcels of School land as to which  
118 the United States expects to offer evidence at the trial of this case that they were wrongfully obtained from the State of California or the State of Oregon, and in which it shall also be set forth as to each of the parcels of School land which are described in the indictment in this case, whether the Government will claim at the trial that it was obtained from the State of California or the State of Oregon, as the case may be, in the name of a fictitious person or of fictitious persons, or of real persons; provided, however, that

if at the trial of this case on the evidence offered on behalf of any of the defendants in any case in which the Government shall have set forth that it will claim that the land was obtained in the name of a fictitious person it shall appear that it was obtained in the name of a real person, the United States shall not be prevented by anything herein from offering evidence tending to show that such land was obtained in the name of such real person by fraud; and provided further, that in cases in which the United States shall give notice that it will claim that the school land was obtained in the name of a fictitious person or persons the United States shall not be precluded by any thing herein contained from offering evidence tending to show that the land was obtained by fraud.

119

*Bill of Particulars.*

Filed Aug. 4, 1906.

In the Supreme Court of the District of Columbia.

Criminal. No. 24141.

THE UNITED STATES OF AMERICA

VS.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND, and  
JOOST H. SCHNEIDER.

The conspiracy charged in the indictment embraces the following methods whereby school lands were to be and were fraudulently obtained from the States of California and Oregon respectively, by and on behalf of the defendants Hyde and Benson, namely:

(1) My making and filing with the proper authorities of said states respectively applications for the purchase of school lands, and assignments of the same, and of the certificates of purchase thereof, in the names of fictitious persons, which applications were supported by what purported to be the affidavits of the applicants, as real persons, whereas in truth and in fact the applicants were fictitious persons and the affidavits were by fictitious persons and were not the affidavits of real persons or affidavits sworn to by any person, but were forged, false, and fraudulent affidavits; and

(2) By making and filing with the proper authorities of said states respectively applications for the purchase of school lands, and assignments of the same, and of the certificates of purchase  
120 thereof, in the names of persons not really desiring, and not qualified, to purchase school lands, (the use of which names for such purposes the said Hyde and Benson procured by paying and causing to be paid to such persons respectively small sums of money, and by falsely representing and causing to be represented to some of such persons that they were merely disposing of their respective rights to purchase school lands)—which applications were supported by false and fraudulent affidavits, in this, that they purported to be the bona fide sworn affidavits of the applicants whose

names were signed thereto, whereas in truth and in fact such affidavits were not the bona fide sworn affidavits of the applicants whose names were signed thereto, because they stated that the affiants therein were persons qualified under the laws of the said State of California, or of the said State of Oregon, as the case might be, to make such applications and to purchase such lands by reason, amongst other things, of their intending to purchase such lands in good faith and for their own benefit respectively, and of their having made no contract or agreement to sell the same, whereas in truth and in fact none of such persons intended to purchase such school lands in good faith for his own use or benefit at all, but was either knowingly aiding and assisting the said Hyde and Benson in their fraudulent practice or innocently acting upon their said false representations; and because also such affidavits were not in truth and in fact ever sworn to at all by any of the persons whose names were signed thereto.

121 As to the following school lands, namely, the east half of section sixteen, in Township thirty-seven south, Range five east, reference being had to the Willamette Meridian and base line in the State of Oregon, which said section sixteen is described in the second count of the indictment; and as to the school lands described in the third count of the indictment as the northwest quarter of section sixteen, in Township twenty-three south, Range seven east, reference being had to the Willamette Meridian and base line in the State of Oregon; and the school lands described in the fifteenth count of the indictment as the southeast quarter of the northeast quarter of section sixteen in Township twenty south, Range seven east, and the northwest quarter of section thirty-six in Township twenty-two south, Range nine east, reference being had to the Willamette Meridian and base line in the State of Oregon; and the school lands described in the twenty-third count of the indictment; and the school lands described in the twenty-sixth count of the indictment, the United States will claim at the trial that such lands were obtained from the States of California and Oregon, as the case may be, upon applications to purchase filed in the names of fictitious persons, in the manner and by the methods described as to the first class above mentioned.

As to the following school lands, namely, the west half of section sixteen, in Township thirty-seven south, Range five east, reference being had to the Willamette Meridian and base line in the

122 State of Oregon, which said section sixteen is described in the second count of the indictment, and as to the school lands described in the fourth count of the indictment as the west half of section sixteen, in Township sixteen south, Range nine east, and the north half of the southeast quarter, and the southwest quarter of the southeast quarter of section thirty-six, in Township one south, Range eight east, reference being had to the Willamette Meridian and base line in the State of Oregon; and the school lands described in the fifth count of the indictment; and the school lands described in the eighth count of the indictment; and the school lands described in the eleventh count of the indictment; and the school lands de-

scribed in the fifteenth count of the indictment as the south half of section sixteen, in Township twenty-one south, Range nine east, section sixteen, in Township twenty-two south, Range seven east, and section sixteen in Township twenty-two south, Range nine east, reference being had to the Willamette Meridian and base line in the State of Oregon; and the school lands described in the twentieth count of the indictment; and the school lands described in the twenty-first count of the indictment, the United States will offer evidence at the trial tending to show that such school lands were obtained upon applications to purchase filed in the names of fictitious persons, but the United States reserves the right to offer evidence, if it deems it necessary, as provided in the order requiring this bill of particulars, to show that such school lands were obtained by fraud.

As to all other school lands described in the several counts 123 of the indictment, excepting the counts numbered from thirty-five to forty-two, inclusive, and the one numbered thirty-three (as to which thirty-third count no evidence will be offered at the trial and no claim will be made in respect thereof), the United States will claim at the trial that the state titles to such school lands were obtained upon applications to purchase filed in the names of persons not really desiring, and not qualified, to purchase the same, in the manner and by the methods described as to the second class above mentioned; and it will not be claimed at the trial as to such counts that such persons were not citizens of the State of California or Oregon, as the case might be, or that they were not citizens of the United States.

Lists A, B and C, attached hereto, are made part of this bill of particulars, the same as if fully set out herein.

List A contains a list of school lands other than those described in the several counts of the indictment, as to which the United States will offer evidence at the trial to show that the same were wrongfully obtained from the States of California and Oregon, respectively, by and on behalf of the defendants Hyde and Benson, in the manner and by the methods set forth in the indictment, in the names of the same persons through whom the school lands described in the said several counts of the indictment were obtained.

List B contains a list of certain of the school lands obtained from the States of California and Oregon, respectively, by and on 124 behalf of the defendants Hyde and Benson, other than those described in the several counts of the indictment and those described in List A of this bill of particulars, as to which school lands described in this list the United States will offer evidence at the trial to show that the same were wrongfully obtained from the said states, respectively, in the manner and by the methods set forth and described in the indictment.

List C contains a list of school lands in the State of California, not strictly within the terms of the order requiring this bill of particulars, as to which school lands the United States will offer evidence at the trial to show that applications to purchase the same

were filed in the State Land Office of California, by and on behalf of the defendants Hyde and Benson in pursuance of the conspiracy charged in the indictment; the names and stated addresses of the applicants and the dates of filing the applications being also given.

DANIEL W. BAKER,  
*Attorney for the United States.*

125

*List A.*

The following is a list of school lands, other than those described in the several counts of the indictment, as to which the Government will offer evidence at the trial, that the same were wrongfully obtained from the States of California and Oregon by and on behalf of Hyde and Benson in the manner and by the methods set forth in the indictment, in the names of the same persons through whom the school lands described in the said several counts were obtained:

## (First Count.)

N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 17 S., R. 9 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 8 E., W. M., Oregon.  
 N. W.  $\frac{1}{4}$  and N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 9 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  and S. W.  $\frac{1}{4}$  Sec. 16, T. 21 S., R. 34 E., M. D. M., California.  
 N.  $\frac{1}{2}$  and S. E.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 37 E., M. D. M., California.  
 N.  $\frac{1}{2}$  Sec. 36, T. 23 S., R. 35 E., M. D. M., California.  
 N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 35 E., M. D. M., California.  
 S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 17 S., R. 9 E., W. M., Oregon.  
 N. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 17 S., R. 9 E., W. M., Oregon.  
 S. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 17 S., R. 9 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 35 E., M. D. M., California.  
 S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 17 S., R. 9 E., W. M., Oregon.  
 N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 17 S., R. 9 E., W. M., Oregon.  
 S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 9 E., W. M., Oregon.

126

## (Third Count.)

S. W.  $\frac{1}{4}$  Sec. 16, T. 23 S., R. 7 E., W. M., Oregon.

## (Fourth Count.)

N. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 7 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 7 E., W. M., Oregon.  
 S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 7 E., W. M., Oregon.  
 S. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 7 E., W. M., Oregon.  
 S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 7 E., W. M., Oregon.  
 N. E.  $\frac{1}{4}$  Sec. 36, T. 1 S., R. 8 E., W. M., Oregon.  
 S. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 1 S., R. 8 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 7 E., W. M., Oregon.

N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 7 E., W. M., Oregon.

N. W.  $\frac{1}{4}$  Sec. 16, T. 25 S., R. 35 E., M. D. M., California.

S.  $\frac{1}{2}$  and S.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 25 S., R. 35 E., M. D. M., California.

N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 25 S., R. 35 E., M. D. M., California.

(Fifth Count.)

S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 35 S., R. 6 E., W. M., Oregon.

S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 36, T. 37 S., R. 5 E., W. M., Oregon.

E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 36, T. 37 S., R. 5 E., W. M., Oregon.

N.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 35 S., R. 6 E., W. M., Oregon.

S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 35 S., R. 6 E., W. M., Oregon.

(Seventh Count.)

N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 9 E., W. M., Oregon.

N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 9 E., W. M., Oregon.

S.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 9 E., W. M., Oregon.

N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 9 E., W. M., Oregon.

127

(Twelfth Count.)

N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 21 S., R. 7 E., W. M., Oregon.

N. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 21 S., R. 7 E., W. M., Oregon.

S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 21 S., R. 7 E., W. M., Oregon.

E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 21 S., R. 7 E., W. M., Oregon.

S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 21 S., R. 7 E., W. M., Oregon.

S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 21 S., R. 7 E., W. M., Oregon.

N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 21 S., R. 7 E., W. M., Oregon.

(Thirteenth Count.)

W.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  & W.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 20 S., R. 8 E., W. M., Oregon.

E.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  & N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 20 S., R. 8 E., W. M., Oregon.

(Fourteenth Count.)

N. W.  $\frac{1}{4}$  and N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 12 S., R. 9 E., W. M., Oregon.

E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 12 S., R. 9 E., W. M., Oregon.

RECEIVED

(Fifteenth Count.)

S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 7 E., W. M., Oregon.

N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 7 E., W. M., Oregon.

N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 7 E., W. M., Oregon.

Lot 1, Sec. 36, T. 22 S., R. 7 E., W. M., Oregon.

S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 20 S., R. 7 E., W. M., Oregon.

Lot 2, Sec. 36, T. 22 S., R. 7 E., W. M., Oregon.

Lot 3, Sec. 36, T. 22 S., R. 7 E., W. M., Oregon.

Lots 2 and 3 (54.35 acres) Sec. 16, T. 20 S., R. 7 E., W. M., Oregon.

W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 20 S., R. 7 E., W. M., Oregon.

Lot 4, Sec. 36, T. 22 S., R. 7 E., W. M., Oregon.

128

(Sixteenth Count.)

S. E.  $\frac{1}{4}$  and S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 20 S., R. 9 E., W. M., Oregon.

N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 20 S., R. 9 E., W. M., Oregon.

E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  & S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 20 S., R. 9 E., W. M., Oregon.

S. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 20 S., R. 9 E., W. M., Oregon.

(Seventeenth Count.)

W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 31 S., R. 2 E., W. M., Oregon.

N. E.  $\frac{1}{4}$  Sec. 16, T. 31 S., R. 2 E., W. M., Oregon.

(Eighteenth Count.)

N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 1 S., R. 10 E., W. M., Oregon.

S. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 1 S., R. 10 E., W. M., Oregon.

N. W.  $\frac{1}{4}$  & W.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  Sec. 36, T. 1 S., R. 10 E., W. M., Oregon.

N. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 1 S., R. 10 E., W. M., Oregon.

S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 1 S., R. 10 E., W. M., Oregon.

(Nineteenth Count.)

Lot 1, Sec. 16, T. 24 S., R. 4 E., W. M., Oregon.

Lot 2, Sec. 16, T. 24 S., R. 4 E., W. M., Oregon.

Lot 3, Sec. 16, T. 24 S., R. 4 E., W. M., Oregon.

N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  & N.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 16, T. 24 S., R. 4 E., W. M., Oregon.

(Twenty-second Count.)

N. W.  $\frac{1}{4}$  & N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 23 S., R. 8 E., W. M., Oregon.

S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 23 S., R. 8 E., W. M., Oregon.

S. W.  $\frac{1}{4}$  Sec. 16, T. 31 S., R. 2 E., W. M., Oregon.

E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 31 S., R. 2 E., W. M., Oregon.

S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 31 S., R. 2 E., W. M., Oregon.

N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 23 S., R. 8 E., W. M., Oregon.

129

(Twenty-third Count.)

N. W.  $\frac{1}{4}$  Sec. 16, T. 23 S., R. 7 E., W. M., Oregon.

(Twenty-fourth Count.)

N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 8 E., W. M., Oregon.

N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 8 E., W. M., Oregon.



N. W.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 8 E., W. M., Oregon.  
 S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 8 E., W. M., Oregon.

(Twenty-seventh Count.)

W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 36, T. 8 N., R. 24 W., and W.  $\frac{1}{2}$  of Sec. 36, T. 7 N., R. 23 W., S. B. M., California.

N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , Sec. 16, T. 7 N., R. 22 W., S. B. M., California.

N.  $\frac{1}{2}$  of Sec. 16, T. 3 N., R. 4 W., S. B. M., California.

(Twenty-eighth Count.)

S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 17 S., R. 32 E., M. D. M., California.

N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 17 S., R. 32 E., M. D. M., California.

N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 36, T. 14 S., R. 32 E., M. D. M., California.

N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 17 S., R. 32 E., M. D. M., California.

S.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 14 S., R. 31 E., M. D. M., California.

(Twenty-ninth Count.)

W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 36, T. 25 S., R. 33 E., M. D. M., California.

130

(Thirtieth Count.)

E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 10 S., R. 8 E., S. B. M., California.

N. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 10 S., R. 8 E., S. B. M., California.

E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and part of N. E.  $\frac{1}{4}$  Sec. 16, T. 10 S., R. 8 E., S. B. M., California.

N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 10 S., R. 8 E., S. B. M., California.

S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 10 S., R. 8 E., S. B. M., California.

S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 10 S., R. 8 E., S. B. M., California.

N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 10 S., R. 8 E., S. B. M., California.

S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 10 S., R. 8 E., S. B. M., California.

(Thirty-second Count.)

S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , N. W.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , and S. E.  $\frac{1}{4}$ , Sec. 16, T. 17 S., R. 33 E., M. D. M., California.

S. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 16, T. 5 N., R. 17 W., S. B. M., California.

## (Thirty-fourth.)

N.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 36, T. 7 N., R. 27 W., S. B. M., California.  
 S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 36, T. 7 N., R. 27 W., S. B. M., California.

*List B.*

The following is a list of certain of the school lands obtained from the States of California and Oregon, respectively, by and on behalf of Frederick A. Hyde and John A. Benson, other than those described in the several counts of the indictment and those described in List A of this bill of particulars, as to which school lands described in this List the United States will offer evidence at the trial that the same were wrongfully obtained from the said states, respectively, in the manner and by the methods set forth and described in the indictment:

- E.  $\frac{1}{2}$  Sec. 36, T. 35 S., R. 4 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 37 S., R. 6 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 37 S., R. 6 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 16, T. 35 S., R. 4 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 16, T. 35 S., R. 4 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 35 S., R. 4 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 32 S., R. 4 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 36, T. 21 S., R. 8 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 22 S., R. 8 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 22 S., R. 8 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 23 S., R. 8 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 16, T. 23 S., R. 9 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 24 S., R. 6 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 36, T. 24 S., R. 6 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 36, T. 23 S., R. 9 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 16, T. 21 S., R. 8 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 16, T. 21 S., R. 8 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 16, T. 23 S., R. 9 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 16, T. 1 S., R. 10 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 36, T. 18 S., R. 9 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 18 S., R. 9 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 16, T. 18 S., R. 9 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 16, T. 24 S., R. 6 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 16, T. 22 S., R. 6 E., W. M., Oregon.  
 132 N.  $\frac{1}{2}$  Sec. 16, T. 22 S., R. 6 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 21 S., R. 8 E., W. M., Oregon  
 E.  $\frac{1}{2}$  Sec. 36, T. 21 S., R. 6 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 16, T. 22 S., R. 8 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 16, T. 23 S., R. 8 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 13 S., R. 9 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 13 S., R. 9 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 16 S., R. 6 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 16 S., R. 6 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 21 S., R. 6 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 16, T. 22 S., R. 8 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 19 S., R. 9 E., W. M., Oregon.

- E.  $\frac{1}{2}$  Sec. 36, T. 19 S., R. 8 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 16, T. 18 S., R. 8 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 16, T. 18 S., R. 8 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 18 S., R. 8 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 18 S., R. 8 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 17 S., R. 9 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 16, T. 17 S., R. 9 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 19 S., R. 8 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 20 S., R. 8 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 16, T. 24 S., R. 6 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 10 S., R. 6 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 18 S., R. 7 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 18 S., R. 7 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 16, T. 12 S., R. 9 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 33, T. 12 S., R. 9 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 12 S., R. 9 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 16, T. 9 S., R. 5 E., W. M., Oregon.  
 133 S.  $\frac{1}{2}$  Sec. 16, T. 9 S., R. 5 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 16, T. 9 S., R. 6 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 16, T. 9 S., R. 6 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 36, T. 9 S., R. 6 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 36, T. 19 S., R. 9 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 16, T. 20 S., R. 8 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 27 S., R. 6 $\frac{1}{2}$  E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 27 S., R. 6 $\frac{1}{2}$  E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 16, T. 5 S., R. 5 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 16, T. 5 S., R. 5 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 5 S., R. 5 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 5 S., R. 5 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 19 S., R. 7 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 19 S., R. 7 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 17 S., R. 9 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 16, T. 18 S., R. 7 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 6 S., R. 6 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 6 S., R. 6 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 16, T. 6 S., R. 6 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 16, T. 6 S., R. 6 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 36, T. 3 S., R. 7 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 3 S., R. 7 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 9 S., R. 6 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 36, T. 20 S., R. 7 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 16, T. 20 S., R. 7 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 16, T. 20 S., R. 6 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 16, T. 20 S., R. 6 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 36, T. 20 S., R. 6 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 20 S., R. 6 E., W. M., Oregon.  
 134 N.  $\frac{1}{2}$  Sec. 36, T. 11 S., R. 7 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 11 S., R. 7 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 16, T. 11 S., R. 7 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 15 S., R. 9 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 36, T. 15 S., R. 9 E., W. M., Oregon.

- S.  $\frac{1}{2}$  Sec. 36, T. 14 S., R. 9 E., W. M., Oregon.  
 N.  $\frac{1}{2}$  Sec. 36, T. 14 S., R. 9 E., W. M., Oregon.  
 E.  $\frac{1}{2}$  Sec. 36, T. 32 S., R. 4 E., W. M., Oregon.  
 S.  $\frac{1}{2}$  Sec. 36, T. 34 S., R. 6 E., W. M., Oregon.  
 W.  $\frac{1}{2}$  Sec. 36, T. 3 S., R. 8  $\frac{1}{2}$  E., W. M., Oregon.  
 S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 35, T. 6 N., R. 23 W., S. B. M., California.  
 N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 7 N., R. 23 W., S. B. M., California.  
 N. W.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 9 S., R. 30 E., M. D. M., California.  
 W.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 9 S., R. 20 E., M. D. M., California.  
 N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 33, T. 12 S., R. 28 E., M. D. M., California.  
 S. E.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , Sec. 36, T. 8 N., R. 24 W., S. B. M., California.  
 N. W.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 8 N., R. 27 W., S. B. M., California.  
 All of Sec. 16, T. 17 S., R. 34 E., M. D. M., California.  
 N. E.  $\frac{1}{4}$ , Sec. 16, T. 7 S., R. 3 E., S. B. M., California.  
 S.  $\frac{1}{2}$ , N. E.  $\frac{1}{4}$ , Sec. 16, T. 4 S., R. 1 E., S. B. M., California.  
 W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 10 S., R. 30 E., M. D. M., California.  
 All of Sec. 36, T. 27 S., R. 36 E., M. D. M., California.  
 All of Sec. 36, T. 11 N., R. 30 W., S. B. M., California.  
 N.  $\frac{1}{2}$ , S. E.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 6 N., R. 26 W., S. B. M., California.  
 135 N. E.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 8 N., R. 27 W., S. B. M., California.  
 W.  $\frac{1}{2}$  of Sec. 16, T. 8 N., R. 26 W., S. B. M., California.  
 All of Sec. 16, T. 9 N., R. 25 W., S. B. M., California.  
 Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Sec. 16, T. 10 N., R. 29 W., S. B. M., California.  
 S. W.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  and lots 3 and 4 of Sec. 36, T. 9 N., R. 24 W., S. B. M., California.  
 E.  $\frac{1}{2}$  and S. W.  $\frac{1}{4}$  of Sec. 16, T. 23 S., R. 35 E., M. D. M., California.  
 S.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , Sec. 16, T. 23 S., R. 35 E., M. D. M., California.  
 N.  $\frac{1}{2}$  and N. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , Sec. 33, T. 6 N., R. 21 W., and N. W.  $\frac{1}{4}$  and N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 36, T. 6 N., R. 23 W., S. B. M., California.  
 All of Sec. 36, T. 10 S., R. 8 E., S. B. M., California.  
 S.  $\frac{1}{4}$  of Sec. 16, T. 8 N., R. 29 W., S. B. M., California.  
 N. W.  $\frac{1}{4}$  and W.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , Sec. 16, T. 8 N., R. 29 W., S. B. M., California.  
 N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , N.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  and S. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , Sec. 16, T. 5 N., R. 23 W., S. B. M., California.  
 E.  $\frac{1}{2}$ , Sec. 36, and N. E.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , Sec. 16, T. 5 N., R. 21 W., S. B. M., California.

E.  $\frac{1}{2}$ , N. W.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 10 S., R. 27 E., M. D. M., and N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 36, T. 12 S., R. 28 E., M. D. M., California.

All of Sec. 36, T. 9 S., R. 4 E., S. B. M., California.

S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , Sec. 16, T. 11 S., R. 29 E., M. D. M., and N.  $\frac{1}{2}$  and S. W.  $\frac{1}{4}$ , Sec. 36, T. 11 S., R. 29 E., and S. W.  $\frac{1}{4}$ , Sec. 16, T. 10 S., R. 30 E., M. D. M.

All of Sec. 16, T. 19 S., R. 33 E., M. D. M., California.

N.  $\frac{1}{2}$ , S. E.  $\frac{1}{4}$ , and E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , Sec. 16, T. 12 S., R. 30 E., and E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , Sec. 16, T. 11 S., R. 30 E., M. D. M., California.

All of Sec. 36, T. 22 S., R. 35 E., M. D. M., California.

All of Sec. 16, T. 5 N., R. 15 E., M. D. M., California.

All of Sec. 16, T. 8 N., R. 25 W., S. B. M., California.

W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , Sec. 16, T. 22 S., R. 35 E., S. E.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , Sec. 16, and N. W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , Sec. 36, T. 22 S., R. 36 E., M. D. M., California.

136 All of Sec. 16, T. 20 S., R. 35 E., M. D. M., California.

N.  $\frac{1}{4}$  Sec. 16, T. 8 N., R. 18 W., S. B. M., California.

All of Sec. 16, T. 5 N., R. 22 E., M. D. M., California.

E.  $\frac{1}{2}$  Sec. 36, T. 8 S., R. 31 E., M. D. M., California.

S.  $\frac{1}{2}$  and W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , Sec. 36, T. 6 N., R. 19 W., S. B. M., California.

S.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , Sec. 36, T. 12 S., R. 29 E., M. D. M., California.

E.  $\frac{1}{2}$  and S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , Sec. 36, T. 24 S., R. 37 E., M. D. M., California.

S. W.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , Sec. 36, T. 27 S., R. 32 E., M. D. M., California.

E.  $\frac{1}{4}$ , E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and N. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , Sec. 16, T. 26 S., R. 37 E., M. D. M., and N. E.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , Sec. 16, T. 27 S., R. 33 E., M. D. M., California.

S. E.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , Sec. 16, T. 27 S., R. 33 E., M. D. M., California.

S.  $\frac{1}{4}$  Sec. 13, T. 27 S., R. 33 E., M. D. M., California.

S.  $\frac{1}{4}$  Sec. 16, T. 28 S., R. 31 E., M. D. M., California.

S.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 10 S., R. 28 E., M. D. M., California.

All of Sec. 36, T. 9 N., R. 23 W., S. B. M., California.

All of Sec. 36, T. 13 N., R. 16 E., M. D. M., California.

All of Sec. 36, T. 7 S., R. 3 E., S. B. M., California.

All of Sec. 36, T. 9 S., R. 3 E., S. B. M., California.

All of Sec. 16, T. 8 N., R. 20 W., S. B. M., California.

All of Sec. 36, T. 8 N., R. 22 W., S. B. M., California.

All of Sec. 36, T. 7 N., R. 22 W., S. B. M., California.

Lots 1, 2, 3, 4, and E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , Sec. 16, T. 8 N., R. 28 W., S. B. M., California.

All of Sec. 36, T. 8 N., R. 29 W., S. B. M., California.

All of Sec. 16, T. 7 N., R. 28 W., S. B. M., California.

All of Sec. 36, T. 6 N., R. 26 W., S. B. M., California.

W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , Sec. 16, T. 8 N., R. 27 W., S. B. M., California.

- W.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , Sec. 16, T. 8 N., R. 27 W., S. B. M., California.
- 137 S.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , Sec. 16, T. 8 N., R. 27 W., S. B. M., California.
- All of Sec. 36, T. 9 N., R. 25 W., S. B. M., California.
- W.  $\frac{1}{2}$ , N. E.  $\frac{1}{4}$ , and W.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , Sec. 36 T. 10 N., R. 30 W., S. B. M., California.
- All of Sec. 16, T. 7 N., R. 21 E., M. D. M., California.
- All of Sec. 36, T. 7 N., R. 21 E., M. D. M., California.
- All of Sec. 16, T. 6 N., R. 19 E., M. D. M., California.
- All of Sec. 36 T. 3 N., R. 24 E., M. D. M., California.
- N.  $\frac{1}{2}$ , S. W.  $\frac{1}{4}$ , and S.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , Sec. 36, T. 7 S., R. 27 E., M. D. M., California.
- All of Sec. 16, T. 22 S., R. 34 E., M. D. M., California.
- E.  $\frac{1}{2}$ , E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , Sec. 36, T. 22 S., R. 33 E., M. D. M., California.
- E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , Sec. 36, T. 25 S., R. 35 E., M. D. M., California.
- N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , Sec. 36, T. 5 N., R. 26 W., and N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  and Lots 1, 8, 9, 11, and 12, Sec. 16, T. 5 N., R. 31 W., S. B. M., California.
- N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , Sec. 16, T. 17 S., R. 35 E., and W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , Sec. 36, T. 24 S., R. 36 E., and W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , Sec. 36, T. 20 S., R. 33 E., M. D. M., California.
- N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , Sec. 36, T. 13 S., R. 29 E., and N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , Sec. 16, T. 7 S., R. 28 E., M. D. M., California.
- All of Sec. 16, T. 8 N., R. 21 W., S. B. M., California.
- All of Sec. 16, T. 9 S., R. 8 E., S. B. M., California.
- All of Sec. 16, T. 7 N., R. 19 W., S. B. M., California.
- N.  $\frac{1}{2}$ , S. W.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  and N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  Sec. 36, T. 5 N., R. 22 W., and S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , Sec. 16, T. 5 N., R. 23 W., S. B. M., California.
- E.  $\frac{1}{2}$  and S. W.  $\frac{1}{4}$ , Sec. 36, T. 8 N., R. 19 W., and W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , Sec. 36, T. 8 N., R. 18 W., S. B. M., California.
- W.  $\frac{1}{2}$ , Sec. 16, T. 8 N., R. 19 W., S. B. M., California.
- N.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , Sec. 36, T. 3 N., R. 10 W., and N.  $\frac{1}{2}$ , S. W.  $\frac{1}{4}$ , and W.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , Sec. 36, T. 6 N., R. 18 W., S. B. M., California.

The following is a list of school lands in the State of California, not strictly within the order requiring this bill of particulars, as to which school lands the United States will offer evidence at the trial to show that applications to purchase the same were filed in the State Land Office of California, by and on behalf of Frederick A. Hyde and John A. Benson in pursuance of the conspiracy charged in the indictment. The names and stated addresses of the applicants and the dates the applications were filed are also given:

## Eureka Land District.

Loc. No.	Name and stated address.	Description.	Date.
2022.	L. M. Gooch, 1104 Wood St. Oakland.	N. 12 W. 36 All.	Sep. 11, 1902.
2023.	C. M. Scott, 967 Clay St. Oakland.	N. 6 E. 36 All.	Sep. 11, "
2024.	Ray Donnelly, 967 Washington St. Oakland.	N. 12 W. 16 All.	Sep. 13, "
2027.	John J. Hayes, c/o D. D. Tenneyson, San Jose.	N. 6 E. 16 All.	Sep. 22, "
2028.	G. A. Hill, c/o D. D. Tenneyson, San Jose.	N. 11 W. 36 All.	Sep. 22, "
2029.	Geo. E. Casey, Grand Hotel, San Fran.	N. 7 E. 36 All.	Sep. 22, "
2030.	Geo. E. Miller, 614 Commercial St. San Fran.	N. 7 E. 16 All.	Sep. 22, "
2031.	Robert Vance Kennedy, 205 Montgomery St. San Fran.	N. 12 W. 16 All.	Sep. 23, "
2032.	A. L. Dunleavy, 240 Townsend St. San Fran.	N. 12 W. 36 All.	Sep. 23, "
2033.	Isla Mills, P. O. Box 2282, San Fran.	N. 12 W. 16 All.	Sep. 23, "
2034.	E. J. Luhnman, 1909 Divisadero St. San Fran.	N. 7 E. 36 Part.	Sep. 25, "
2035.	R. E. Johnson, 324 Pine St. San Fran.	N. 7 E. 16 Part.	Sep. 25, "
2036.	J. J. Ledingwell, 879 Market St. San Fran.	N. 11 W. 16 All.	Sep. 25, "
2037.	David Harris, 631 Sacramento St. San Fran.	N. 11 W. 16 All.	Sep. 25, "
2038.	J. M. Abrams, 1140 A. Howard St. San Fran.	N. 11 W. 36 All.	Sep. 25, "
2039.	William J. Preston, 400 Ninth St. San Fran.	N. 11 W. 36 All.	Sep. 25, "
2040.	W. J. Wren, 212 Sansome St. San Fran.	N. 11 W. 16 All.	Sep. 25, "
2041.	George Nimmo, 1107 1/2 Vallejo St. San Fran.	N. 11 W. 36 All.	Sep. 25, "
139			
2042.	James Rutherford, San Jose.	N. 11 W. 36 All.	Sep. 25, 1902.
2043.	W. H. Winn, 1320 Vermont St. San Fran.	N. 12 W. 36 All.	Sep. 25, "
2045.	Charles H. Purdy, 426 O'Farrell St. San Fran.	N. 12 W. 36 All.	Sep. 25, "
2046.	Zoe Ackerman, 1327 Myrtle St. Oakland.	N. 12 W. 16 All.	Sep. 25, "
2047.	Walter Hall, 606 Montgomery St. San Fran.	N. 11 W. 36 All.	Sep. 25, "
2049.	F. C. Shuler, 1261 1/2 Welch St. San Fran.	N. 10 W. 36 All.	Sep. 25, "

2050.	F. W. West, 1405 B. Pacific Ave. San Fran.	41	N.	12	W.	36	All.	Sep. 27,	"
2051.	H. W. Cadwell, 826 Noe St. San Fran.	41	N.	12	W.	16	All.	Sep. 27,	"
2052.	Peter Sinclair, 121 York St. San Fran.	45	N.	11	W.	36	All.	Sep. 27,	"
2053.	H. Lesser, 530 Calif. St. San Fran.	29	N.	11	W.	36	Part.	Oct. 3,	"
2054.	Lizzie Pickard, 412½ 6th St. San Fran.	40	N.	11	W.	36	All.	Oct. 3,	"
2055.	William Pitman, c/o D. D. Tenneyson, San Jose.	44	N.	12	W.	36	All.	Oct. 3,	"
2056.	Siman Turner, c/o D. D. Tenneyson, San Jose.	45	N.	12	W.	16	All.	Oct. 3,	"
2057.	John Connor, c/o D. D. Tenneyson, San Jose.	45	N.	11	W.	16	All.	Oct. 3,	"
2058.	Wallace Edson, c/o D. D. Tenneyson, San Jose.	45	N.	12	W.	36	All.	Oct. 3,	"
2059.	Joe Walker, 412½ 6th St. San Fran.	46	N.	12	W.	36	All.	Oct. 3,	"
2060.	Serenia Winn, 1320 Vermont St. San Fran.	47	N.	12	W.	16	All.	Oct. 3,	"
2061.	Frank M. Cummings, 878 Broadway, San Fran.	13	N.	6	E.	36	All.	Oct. 3,	"
2062.	C. H. Taylor, 1218 Turk St. San Fran.	48	N.	11	W.	36	All.	Oct. 3,	"
2063.	S. S. Stephens, 916 Market St. San Fran.	47	N.	11	W.	16	All.	Oct. 3,	"
2064.	C. K. King, 464 9th St. Oakland.	42	N.	11	W.	16	All.	Oct. 3,	"
2065.	M. L. Fogarty, San Francisco.	42	N.	12	W.	36	All.	Oct. 3,	"
2066.	Joe Witt C. Moore M. D. 630 Market St. San Fran.	42	N.	12	W.	16	All.	Oct. 3,	"
2067.	J. W. Sparrow, 107 Geary St. San Fran.	43	N.	11	W.	16	All.	Oct. 3,	"
2068.	A. R. Peterson, 464 9th St. Oakland.	44	N.	11	W.	36	All.	Oct. 3,	"
2069.	J. Fairweather, 1737 Clay St. San Fran.	17	N.	4	E.	36	All.	Oct. 3,	"
2070.	Thos. Nolan, Railroad House, San Francisco.	17	N.	6	E.	36	All.	Oct. 3,	"
2071.	H. L. Brantbauer, Berkeley, Alameda Co.	16	N.	5	E.	36	All.	Oct. 3,	"
2072.	J. A. Fontaine, Grand Hotel, San Francisco.	16	N.	4	E.	16	All.	Oct. 3,	"
2073.	Charles Purdy, 426 O'Farrell St. San Fran.	16	N.	5	E.	16	All.	Oct. 3,	1902.
2074.	Thomas Watts, 615 Turk St. San Francisco.	15	N.	4	E.	16	All.	Oct. 3,	"
2075.	W. W. Bellenger, 53 Hoff Ave. San Fran.	19	N.	6	E.	36	All.	Oct. 3,	"
2076.	William Weller, Hobson House, San Fran.	17	N.	6	E.	16	All.	Oct. 3,	"
2077.	Frank Selz, Cor. Ellis & Market St. San Fran.	16	N.	6	E.	36	All.	Oct. 3,	"



Loc. No.	Name and stated address.	Description.	Date.
2082.	Abram Smith, 631 Sacramento St. San Fran.	17 I. 4 E. 16 All.	Oct. 3,
2083.	J. Lee Prosser D. D. S. 1055 Washington St. San Fran.	18 N. 7 E. 33 All.	Oct. 3,
2084.	Chas. C. Hewes, 719 Market St. San Fran.	18 N. 5 E. 35 All.	Oct. 3,
2085.	Joseph Pike, 816 Jackson St. San Fran.	17 N. 5 E. 16 All.	Oct. 3,
2087.	G. F. Edwards, 634 Sacramento St. San Fran.	15 N. 4 E. 36 All.	Oct. 3,
2088.	William M. Fletcher, 530 Hobart St. Oakland.	18 N. 7 E. 16 All.	Oct. 3,
2089.	J. R. Welch, 1129 E. 15th St. East Oakland.	14 N. 8 E. 16 All.	Oct. 3,
2090.	Henry F. Paulding, 3231 Encinal Ave, Alameda.	16 N. 7 E. 35 All.	Oct. 3,
2091.	Harry Tilley, 2110 Sansome St. San Fran.	12 N. 8 E. 16 All.	Oct. 3,
2092.	Marion I. McEthern, 4252 24th St. San Fran.	19 N. 7 E. 36 All.	Oct. 3,
2093.	Mary J. B. Fogarty, San Francisco.	43 N. 11 W. 35 All.	Oct. 3,
2094.	George B. Stone, 121 Geary St. San Fran.	17 N. 8 E. 16 All.	Oct. 3,
2095.	James Karr, 634 Sacramento St. San Fran.	8 N. 7 E. 35 All.	Oct. 4,
2096.	Harry B. Davis, 340 Shotwell St. San Fran.	8 N. 7 E. 16 All.	Oct. 4,
2097.	Albert E. Seabold, 17 Polk St. San Fran.	8 N. 6 E. 16 All.	Oct. 4,
2098.	H. A. Tricon, 692 Linden Ave. San Fran.	9 N. 6 E. 16 All.	Oct. 4,
2099.	John B. Preston, 14 Perry St. San Fran.	9 N. 7 E. 35 All.	Oct. 4,
2100.	John S. Wood, 1415 Bush St. San Francisco.	9 N. 6 E. 36 All.	Oct. 4,
2101.	James Allen, 1817 Howard St. San Fran.	7 N. 6 E. 16 All.	Oct. 4,
2102.	Adam Ross, 507 Jones St. San Fran.	9 N. 7 E. 16 Part.	Oct. 4,
2103.	Emil Weiss, San Francisco.	8 N. 6 E. 35 All.	Oct. 4,
2104.	Thos. Freeman, 219 Eddy St. San Fran.	15 N. 8 E. 16 All.	Oct. 4,
2105.	H. A. Perry, 137 South Park, San Fran.	16 N. 8 E. 16 Part.	Oct. 4,
		11 N. 8 E. 16 Part.	Oct. 4,
141			
2106.	C. O. McDougal, 622 Hayes St. San Fran.	19 N. 5 E. 36 Part.	Oct. 4, 1902.
		11 N. 8 E. 16 Part.	Oct. 4,

2107.	Samuel William Spangler, 1016 Clay St. Oakland.....	10	N. 8 E. 16 Part.	Oct. 4,
		9	N. 8 E. 16 Part.	Oct. 4,
2118.	Charles Waltz, c/o D. D. Tenneyson, San Jose.....	4	N. 7 E. 36 All.	Oct. 6,
2119.	G. B. Bodwell, c/o D. D. Tenneyson, San Jose.....	3	N. 7 E. 16 All.	Oct. 6,
2120.	George Urlaub, 5333 Sacramento St. San Fran.....	5	N. 7 E. 16 All.	Oct. 6,
2121.	John P. Mahoney, 27 Julia St. San Fran.....	6	N. 7 E. 16 All.	Oct. 6,
2122.	John C. Cowan, 634 Sacramento St. San Fran.....	5	N. 8 E. 16 Part.	Oct. 6,
		6	N. 8 E. 16 Part.	Oct. 6,
2123.	George Dunn, 1432 Mason St. San Fran.....	3	N. 8 E. 16 Part.	Oct. 6,
		2	N. 8 E. 16 Part.	Oct. 6,
2124.	Andrew Beager, 1918 Folsom St. San Fran.....	6	N. 7 E. 35 All.	Oct. 6,
2130.	Samuel Worden, 516 3rd St. San Fran.....	14	N. 5 E. 36 All.	Oct. 6,
2141.	Charles M. Harris, 627 Eddy St. San Fran.....	12	N. 7 E. 36 All.	Oct. 6,
2142.	H. Digby Johnston, 927 Market St. San Fran.....	12	N. 6 E. 16 All.	Oct. 6,
2143.	James W. Hoag, 151 2nd St. San Francisco.....	12	N. 7 E. 16 All.	Oct. 6,
2144.	Bessie G. Falvey, 927 Market St. San Fran.....	48	N. 12 W. 16 Part.	Oct. 6,
2145.	Andrew L. Valleau, 1435 Benton St. Alameda.....	48	N. 11 W. 16 Part.	Oct. 6,
2148.	B. F. Taylor, 218 Eddy St. San Francisco.....	10	N. 7 E. 36 All.	Oct. 8,
2151.	James L. Crowner, c/o D. D. Tenneyson, San Jose.....	7	N. 7 E. 36 All.	Oct. 8,
2154.	Mary M. Harris, 131 Cottingwood St. San Fran.....	38	N. 12 W. 36 Part.	Oct. 9,
2155.	Orin F. Woods, c/o D. D. Tenneyson, San Jose.....	12	N. 5 E. 16 Part.	Oct. 9,
2160.	Henry Bitter, San Francisco.....	18	N. 8 E. 16 Part.	Oct. 10,
		15	N. 7 E. 16 Part.	Oct. 10,
			36 Part.	Oct. 10,
2161.	Samuel Dodge, 33 Day St. San Francisco.....	8	N. 8 E. 16 Part.	Oct. 10, 1902.
2162.	James S. Francis, 2528 Clement St. Alameda.....	7	N. 8 E. 16 Part.	Oct. 10,
2163.	Thomas Threlfall, 330 Pine St. San Fran.....	15	N. 6 E. 16 Part.	Oct. 10,
2164.	Fred Holmes, 2036 Leavenworth St. San Fran.....	17	N. 7 E. 36 Part.	Oct. 10,
		13	N. 8 E. 16 All.	Oct. 10,
		10	N. 4 E. 36 Part.	Oct. 10,

Loc. No.	Name and stated address.	Description.	Date.
142			
2168.	Bernard Lemaire, c/o D. D. Tenneyson, San Jose	35 N. 12 W. 16 All.	Oct. 24, 1902.
2171.	Donald McDougall, 12 Ellis St., San Fran.	37 N. 11 W. 16 All.	Oct. 28, "
2172.	John Pair, San Francisco	37 N. 12 W. 36 All.	Nov. 1, "
2193.	Mary Marsh, San Francisco	44 N. 11 W. 16 All.	Feb. 4, 1903.
Redding Land District.			
3824.	Albert A. Arnold, 387 Height St., San Fran.	32 N. 5 E. 36 All.	Sep. 11, 1902.
3835.	Mark P. Kevan, 1001 Franklin St., Oakland.	31 N. 5 E. 16 All.	Sep. 11, "
3836.	T. A. Broughton, 2910 Jackson St., San Fran.	31 N. 5 E. 35 All.	Sep. 11, "
3837.	Robert E. Cronin, 476 10th St., Oakland.	42 N. 2 W. 35 All.	Sep. 11, "
3838.	Joseph B. Kennedy, 628 Ellis St., San Fran.	35 N. 6 W. 35 Part.	Sep. 11, "
3839.	John Bailey, 1626 Harrison St., San Fran.	45 N. 3 W. 15 All.	Sep. 11, "
3840.	R. M. Biering, 55 Cedar Ave., San Fran.	41 N. 2 W. 16 All.	Sep. 12, "
3841.	James S. Hansell, 517 13th St., Oakland.	41 N. 3 W. 16 All.	Sep. 12, "
3842.	Beatrice Cameron, 853 1/2 Franklin St., Oakland.	41 N. 3 W. 35 All.	Sep. 12, "
3844.	Annie E. Melan, 504 O'Farrell St., San Fran.	42 N. 3 W. 16 All.	Sep. 12, "
3845.	George Molusk, 665 9th St., Oakland.	42 N. 1 W. 36 All.	Sep. 12, "
3846.	Mae J. Meahan, 504 O'Farrell St., San Fran.	45 N. 3 W. 16 All.	Sep. 12, "
3848.	F. L. Moore, 808 Mission St., San Fran.	32 N. 5 E. 16 All.	Sep. 13, "
3849.	John H. Compton, 18 Austin St., San Fran.	30 N. 4 E. 16 All.	Sep. 13, "
3851.	James J. Cummings, 1218 19th St., Alameda.	29 N. 4 E. 35 Part.	Sep. 15, "
3852.	Chas. Evans, 2301 Clinton Ave., Alameda.	27 N. 4 E. 36 All.	Sep. 15, "
3853.	Thos. N. Smith, 41 Madison Ave., San Fran.	38 N. 10 W. 16 All.	Sep. 15, "
3858.	James B. Egan, 700 Van Ness Ave., San Fran.	34 N. 5 E. 16 All.	Sep. 17, "
3859.	L. M. Ranons, 336 Hyde St., San Fran.	32 N. 6 E. 35 All.	Sep. 19, "
3861.	A. E. Martinecki, 118 Front St., San Fran.	35 N. 5 E. 16 All.	Sep. 19, "

3863.	J. W. Strandberg, c/o D. D. Tennyson, San Jose.	35	N.	5	E.	16	All.	Sep. 22,	1902.
3864.	Charles H. Youtz, c/o D. D. Tennyson, San Jose.	33	N.	5	E.	36	All.	Sep. 22,	"
3865.	Lucien W. Tricon, 814 Grove St. San Fran.	39	N.	10	W.	36	All.	Sep. 22,	"
3867.	Edward S. Tyler, San Francisco.	38	N.	9	W.	36	All.	Sep. 22,	"
3868.	F. T. Hall, 1630 Market St. San Fran.	42	N.	3	W.	36	All.	Sep. 22,	"
3874.	F. R. Benson, 2710 Howard St. San Fran.	39	N.	10	W.	16	All.	Sep. 25,	"
3875.	Emerson Deaton, 44 3d St. San Francisco.	37	N.	10	W.	16	All.	Sep. 25,	"
3877.	Wm. J. Harrington, c/o 538 Kearney St. San Fran.	30	N.	4	E.	36	Part.	Sep. 27,	"
3878.	David Cook, c/o 538 Kearney St. San Francisco.	33	N.	4	E.	16	Part.	Sep. 27,	"
		35	N.	4	E.	36	Part.	Sep. 27,	"
3879.	W. B. Schuyler, 530 Calif. St. San Francisco.	36	N.	10	W.	16	All.	Oct. 3,	"
3880.	James Howell, 20 Ringold St. San Francisco.	30	N.	4	E.	36	Part.	Oct. 3,	"
3882.	C. E. Hills, 15 Patton St. San Francisco.	48	N.	10	W.	36	All.	Oct. 3,	"
3883.	David Kimber Watkins, 1218 Turk St. San Fran.	45	N.	10	W.	36	All.	Oct. 3,	"
3885.	Franklin Reed Morrison, 135 San Jose Ave. San Fr.	32	N.	4	E.	36	All.	Oct. 3,	"
3887.	Andrew L. Valteau, 1436 Benton St. Alameda, San Fr.	48	N.	10	W.	16	Part.	Oct. 6,	"
3897.	J. M. Patterson, 15 Sherwood Place, San Fran.	41	N.	10	W.	36	All.	Oct. 24,	"
3898.	Wm. S. Sampson, 398 Sutter St. San Fran.	41	N.	10	W.	16	All.	Oct. 24,	"
3899.	D. J. Thomas, 14 McAllister St. San Fran.	36	N.	8	W.	36	All.	Oct. 27,	"
3900.	M. M. Rich, 214 Tehama St. San Fran.	38	N.	9	W.	16	All.	Oct. 28,	"
3901.	David Canley, 117 Eddy St. San Fran.	35	N.	2	W.	36	All.	Oct. 28,	"
3902.	James Kray, 127 2d St. San Francisco.	35	N.	3	W.	36	All.	Oct. 28,	"
3903.	Fred B. Bell, 12 Mason St. San Fran.	34	N.	3	W.	36	All.	Oct. 28,	"
3904.	John Walker, c/o D. D. Tennyson, San Jose.	39	N.	7	W.	16	All.	Nov. 1,	"
3905.	Daniel McMullen, c/o D. D. Tennyson, San Jose.	39	N.	7	W.	36	All.	Nov. 1,	"
3905.	Philip Brady, c/o D. D. Tennyson, San Jose.	34	N.	2	W.	16	All.	Nov. 1,	"
3907.	Lyman Bruce, 118 Ellis St. San Fran.	39	N.	6	W.	16	All.	Nov. 1,	"
3908.	F. A. Daney, c/o D. D. Tennyson, San Jose.	38	N.	7	W.	36	All.	Nov. 1,	"

144	Loc. No.	Name and stated address.	Description.	Date.
	3909.	C. N. Harrison, Grand Hotel, San Fran.	N. 10 W. 36 All.	Nov. 1, 1902.
	3910.	Geo. H. Arnold, Grand Hotel, San Fran.	N. 9 W. 16 All.	Nov. 1, "
	3911.	H. P. Benjamin, c/o D. D. Tennyson, San Jose.	N. 6 W. 16 All.	Nov. 1, "
	3912.	G. C. Campbell, c/o D. D. Tennyson, San Jose.	N. 9 W. 36 All.	Nov. 1, "
	3913.	Donald McL. Short, 2501 Gough St., San Fran.	N. 7 W. 36 All.	Nov. 1, "
	3914.	Henry Kernir, 1817 Howard St., San Fran.	N. 2 W. 36 All.	Nov. 1, "
	3915.	Hugh McCoy, 24 Natoma St., San Fran.	N. 4 W. 36 All.	Nov. 1, "
	3916.	S. M. Westbrook, c/o D. D. Tennyson, San Jose.	N. 8 W. 36 All.	Nov. 1, "
	3917.	T. F. Bachelor, Alameda.	N. 3 W. 36 All.	Nov. 1, "
	3918.	Richard Ellis, 743 Market St., San Fran.	N. 6 W. 16 All.	Nov. 1, "
	3919.	Jean Anoray, San Francisco.	N. 8 W. 36 All.	Nov. 1, "
	3920.	Win. Land, 1817 B Mission St., San Francisco.	N. 9 W. 36 All.	Nov. 1, "
	3921.	Charles D. Clayton, S. E. Cor. 3d-Mission San Fran.	N. 7 W. 16 All.	Nov. 1, "
	3922.	Charles Robinson, 118 1/2 Ellis St., San Fran.	N. 9 W. 36 All.	Nov. 1, "
	3923.	Frank C. Drew, 25 Julia St., San Fran.	N. 3 W. 16 All.	Nov. 1, "
	3924.	Marin S. Willert, 940 Hyde St., San Fran.	N. 7 W. 16 All.	Nov. 1, "
	3925.	E. F. Foran, 631 Clay St., San Fran.	N. 8 W. 16 All.	Nov. 1, "
	3926.	J. Holtz, 620 Sacramento St., San Fran.	N. 2 W. 16 All.	Nov. 1, "
	3927.	Daniel W. Davis, c/o D. D. Tennyson, San Jose.	N. 8 W. 36 All.	Nov. 1, "
	3928.	George Morris, c/o D. D. Tennyson, San Jose.	N. 1 W. 16 All.	Nov. 1, "
	3929.	Geo. E. G. Jackson, San Francisco.	N. 35 N. 1 W. 16 All.	Nov. 1, "
	3931.	Charles R. Pearson, 2022 Fillmore St., San Fran.	N. 8 W. 36 All.	Nov. 1, "
	3932.	Robert Schaub, 625 Sacramento St., San Fran.	N. 10 W. 16 All.	Nov. 1, "
	3934.	Thomas J. Elmes, 1721 15th St., San Fran.	N. 9 W. 16 All.	Nov. 1, "
	3937.	Mary A. Foulds, Berkeley.	N. 1 W. 16 All.	Nov. 1, "
	3940.	H. C. Barnes, c/o D. D. Tennyson, San Jose.	N. 7 W. 36 All.	Nov. 1, "
	3941.	Geo. W. Bell, San Francisco.	N. 6 W. 16 Part.	Nov. 3, "
			N. 2 W. 16 Part.	Nov. 3, "

3942.	E. N. Gilbert, c/o D. D. Tenyson, San Jose.	36	N.	1	W.	16	Part.	Nov. 3, 1902.
3943.	C. C. Murray, 502 Washington St. San Fran.	36	N.	5	W.	16	Part.	Nov. 3, "
3944.	Manuel Porter, c/o D. D. Porter, San Jose.	36	N.	2	W.	16	Part.	Nov. 3, "
3945.	Bessie V. Newell, Oakland.	35	N.	6	W.	36	Part.	Nov. 3, "
3946.	Ella E. Newell, Oakland.	34	N.	8	W.	36	Part.	Nov. 3, "
3947.	J. G. Gibson, 10 Austin St. San Fran.	34	N.	9	W.	36	Part.	Nov. 3, "
3948.	Horace Lunstedt, 361 Devisadero St. San Fran.	45	N.	2	W.	36	Part.	Nov. 3, "
3949.	Lawrence L. Sherrod, 6 O'Farrell St. San Fran.	43	N.	1	W.	16	Part.	Nov. 3, "
3950.	Wm. A. West, c/o M. F. Reilly, 738 Kearney St. S. F.	34	N.	4	E.	16	All.	Nov. 10, "
3951.	Joseph G. Doud, 653 Buchanan St. San Fran.	33	N.	4	E.	36	All.	Nov. 14, "
3952.	Oscar Ellinghouse, 236 Bush St. San Fran.	45	N.	9	W.	36	All.	Nov. 17, "
3953.	John P. Dowdle, 233 Bush St. San Fran.	32	N.	3	E.	16	All.	Nov. 19, "
3954.	Sarah McGuire, 908 Pine St. San Francisco.	36	N.	8	W.	16	All.	Nov. 26, "
3955.	Fred W. Hollman, 916 Harrison St. San Fran.	37	N.	1	E.	16	All.	Dec. 18, "
3956.	Dale Warford, 1549 Mission St. San Fran.	27	N.	2	E.	16	All.	Jan. 8, 1903.
3957.	Nellie Boyd, San Francisco.	27	N.	3	E.	36	Part.	Jan. 8, "
3958.	Dora Humphrey, 417 Kearney St. San Fran.	28	N.	3	E.	16	All.	Jan. 9, "
3959.	John Raye, San Francisco.	25	N.	3	E.	16	All.	Jan. 12, "
3960.	F. A. Musante, 228 Crocker Building, San Fran.	33	N.	3	E.	16	All.	Jan. 13, "
3961.	C. A. Collins, San Francisco.	33	N.	3	E.	16	All.	Jan. 13, "
3962.	J. A. Dilger, San Francisco.	34	N.	3	E.	16	All.	Jan. 13, "
3963.	Leander B. McCoy, 258 Bush St. San Fran.	32	N.	3	E.	36	All.	Jan. 13, "
3964.	D. W. Dillard, San Francisco.	38	N.	3	W.	36	All.	Jan. 13, "
3965.	Clarence E. Ayer, San Francisco.	35	N.	2	W.	36	All.	Jan. 13, "
3966.	F. W. Caney, San Francisco.	43	N.	8	W.	16	All.	Jan. 15, "
3967.		27	N.	4	E.	16	All.	Jan. 20, "
3968.		45	N.	8	W.	16	All.	Jan. 23, "
3969.		47	N.	8	W.	36	Part.	Jan. 23, "
3970.		45	N.	9	W.	16	All.	Feb. 4, "

Loc. No.	Name and stated address.	Description.	Date.
4011.	Charles W. Kinsman, San Francisco	46 N. 10 W. 36 All.	Feb. 4, "
4012.	Thomas B. Threlfall, San Francisco	48 N. 9 W. 36 Part. 16 Part.	Feb. 4, " Feb. 4, "
146			
4013.	Anthony W. Colver, Mills Bldg. San Fran.	43 N. 1 W. 36 Part.	Feb. 5, 1903
4014.	C. D. Doling, 171 E. 14th St. Oakland.	37 N. 6 W. 16 Part.	Feb. 5, "
4016.	William J. Cauty, Oakland.	39 N. 5 W. 36 Part.	Feb. 5, "
4017.	Katherine C. Hogan, 623 19th St. Oakland.	28 N. 1 W. 36 All.	Feb. 5, "
4018.	Charles G. Hardy, Oakland.	39 N. 2 W. 36 Part.	Feb. 5, "
Susanville Land District.			
3919.	Louis F. Daniels, Overland House, San Fran.	21 N. 16 E. 36 All.	Sept. 5, 1902
3920.	Miss Mary Lowe, 471 10th St. Oakland.	28 N. 11 E. 16 Part.	Sept. 6, "
3921.	Chas. Howard Smith, Mills Bldg. San Fran.	33 N. 10 E. 16 All.	Sept. 6, "
3922.	Wayne C. Colver, Mills Bldg. San Fran.	33 N. 9 E. 16 All.	Sept. 6, "
3928.	Allie Bailey, 1626 Harrison St. San Fran.	27 N. 10 E. 16 Part.	Sept. 10, "
3932.	Alice W. Dickson, 2910 Jackson St. San Fran.	31 N. 6 E. 36 All.	Sept. 11, "
3937.	Jas. Coulter, 555 Ellis St. San Fran.	30 N. 7 E. 16 All.	Sept. 13, "
3943.	Geo. W. Walker, 774 1/2 Mission St. San Fran.	31 N. 7 E. 16 All.	Sept. 15, "
3947.	S. A. Raphael, c/o E. M. Buckley, 2002 Powell St. S. F.	25 N. 6 E. 16 All.	Sept. 18, "
3948.	John W. Moffitt, c/o E. M. Buckley, 2002 Powell St. S. F.	34 N. 6 E. 16 Part.	Sept. 18, "
3950.	Moses Engel, 33 6th St. San Fran.	34 N. 6 E. 36 Part.	Sept. 19, "
		35 N. 6 E. 36 Part.	Sept. 19, "
3951.	F. R. Trindell, 223 Sansome St. San Francisco.	32 N. 9 E. 16 Part.	Sept. 19, "
		33 N. 6 E. 36 Part.	Sept. 19, "
3952.	Fred H. Clarke, 736 Getary St. San Fran.	34 N. 6 E. 16 Part. 36 Part.	Sept. 19, " Sept. 19, "

3953.	Frank D. Tricon, 13 Fremont St. San Fran.	33 N. 6 E. 16 Part.	“	Sep. 19,
3954.	Isaac K. White, 318 Front St. San Fran.	36 Part.	“	Sep. 19,
3955.	F. Herman Guntz, 205 Montgomery St. San Fran.	33 N. 8 E. 16 All.	“	Sep. 19,
3960.	W. S. Gill, 864 Mission St. San Fran.	30 N. 5 E. 16 All.	“	Sep. 19,
147		26 N. 14 E. 36 All.	“	Oct. 24,
3991.	John B. Anderson, Berkeley	26 N. 12 E. 36 Part.	Oct. 24,	1902
3992.	William Savoy, 1021 Clay St. San Fran.	27 N. 9 E. 36 Part.	Oct. 24,	“
3993.	James Nolan, 624 Green St. San Fran.	27 N. 13 E. 36 Part.	Oct. 24,	“
3994.	Henry Mallory, 613 Minna St. San Fran.	26 N. 13 E. 16 Part.	Oct. 24,	“
3995.	James J. Murray, 400 Larkin St. San Fran.	25 N. 12 E. 36 All.	Oct. 24,	“
3996.	Wm. C. Wells, 634 Sacramento St. San Fran.	26 N. 15 E. 36 Part.	Oct. 24,	“
3997.	W. H. Wickham, c/o D. D. Tennyson, San Jose.	25 N. 16 E. 36 Part.	Oct. 24,	“
3998.	Frank Garcia, c/o D. D. Tennyson, San Jose.	25 N. 15 E. 33 All.	Oct. 24,	“
3999.	Thomas F. Ennels, 514 Broadway, San Fran.	25 N. 12 E. 16 Part.	Oct. 24,	“
4000.	Patrick Murphy, c/o D. D. Tennyson, San Jose.	28 N. 12 E. 36 Part.	Oct. 24,	“
4001.	Theodore Getty, 67 Portola St. San Fran.	34 N. 11 E. 36 All.	Oct. 24,	“
4002.	N. H. Sweetman, c/o D. D. Tennyson, San Jose.	25 N. 16 E. 16 Part.	Oct. 24,	“
4004.	James E. Tyler, c/o D. D. Tennyson, San Jose.	24 N. 11 E. 36 Part.	Oct. 24,	“
4008.	G. N. Potter, 1224 Florida St. San Fran.	23 N. 11 E. 33 Part.	Oct. 24,	“
4018.	Thomas W. Nowlin, 230 Montgomery St. San Fran.	28 N. 13 E. 16 Part.	Oct. 28,	“
4019.	Julius F. Tassett, 230 Montgomery St. San Fran.	28 N. 12 E. 16 All.	Nov. 1,	“
4050.	Joseph G. Kohler, San Francisco.	32 N. 9 E. 36 All.	Nov. 14,	“
4052.	Michael Mohr, 578 Mission St. San Fran.	21 N. 12 E. 16 Part.	Jan. 12,	1903
		24 N. 11 E. 36 Part.	Jan. 12,	“
		23 N. 12 E. 16 All.	Jan. 12,	“
		24 N. 15 E. 36 All.	Jan. 13,	“
		24 N. 15 E. 16 All.	Jan. 13,	“



Loc. No.	Name and stated address.	Description.	Date.
4053.	Allie Bailey, 1626 Harrison St. San Fran.	27 N. 10 E. 16 Part.	Jan. 13, "
4052.	Arthur E. Foutz, 200 Market St. San Fran.	24 N. 13 E. 16 Part.	Jan. 17, "
4059.	Woodley B. Smith, 2405 Octavia St. San Fran.	23 N. 12 E. 36 Part.	Jan. 23, "
		23 N. 7 E. 16 Part.	Jan. 23, "
4074.	Lulu M. Smith, San Francisco	23 N. 17 E. 36 Part.	Jan. 28, "
4075.	M. K. Stade, San Francisco	22 N. 16 E. 36 All.	Jan. 28, "
148			
4111.	W. B. Reynolds, San Francisco.	29 N. 6 E. 16 Part.	Feb. 4, 1903
Sacramento Land District.			
2826.	Gertrude Harrison, 2207 Telegraph Ave. Oakland.	9 N. 17 E. 16 All.	Sep. 13, 1902
2827.	Geo. W. Brewer, 3725 29th St. San Francisco.	14 N. 15 E. 16 All.	Sep. 13, "
2831.	Michael Loenard, 12th & L Sts. San Fran.	15 N. 15 E. 16 All.	Sep. 17, "
2832.	William H. Green, 876 Market St. San Fran.	14 N. 15 E. 36 All.	Sep. 17, "
2833.	James Carney, 832 Harrison St. San Fran.	10 N. 17 E. 16 All.	Sep. 17, "
2835.	John N. Bishop, 1611 12th St. Oakland.	14 N. 14 E. 16 All.	Sep. 25, "
2837.	Lars Robinson, 735 Mission St., San Francisco.	9 N. 16 E. 16 All.	Sep. 25, "
2844.	Marcus F. Thurmond, 735 Eddy St. San Fran.	14 N. 12 E. 36 All.	Oct. 10, "
2845.	A. H. Bundy, California Hotel, San Fran.	16 N. 15 E. 36 All.	Oct. 13, "
2846.	George Thomas, 805 Stockton St. San Fran.	16 N. 15 E. 16 All.	Oct. 13, "
2847.	Albert Seabold, 721 Polk St. San Francisco.	14 N. 16 E. 35 All.	Oct. 13, "
2848.	N. W. Orr, 20 Ellis St. San Francisco.	8 N. 16 E. 36 All.	Oct. 13, "
2849.	I. G. Johnson, 757 Market St. San Francisco.	7 N. 17 E. 36 All.	Oct. 13, "
2850.	M. M. Sledge, 35 Fifth St. San Francisco.	10 N. 16 E. 35 All.	Oct. 13, "
2855.	W. F. McClure, 11 Montgomery St. San Fran.	16 N. 14 E. 36 All.	Dec. 20, "
2877.	Pauline W. Carey, 209 Hearst Bldg. San Fran.	21 N. 13 E. 16 W. 1/2, 36 W. 1/2.	Jan. 3, 1903
			Jan. 3, "

2878.	Bernhard H. Wedmeyer, 620 Market St., San Fran.	19 N. 13 E. 16 All.	Jan. 3,	"
2879.	Thomas F. A. Obermeyer, 620 Market St., San Fran.	20 N. 13 E. 36 All.	Jan. 3,	"
2880.	Richard Brainard, 11 Montgomery St. San Fran.	21 N. 11 E. 16 All.	Jan. 3,	"
2886.	William B. Ash, 522 Ellis St. San Fran.	16 N. 14 E. 16	Jan. 12,	"
149				
2887.	Chas. H. Suydam, 2831 Washington St. San Fran.	14 N. 16 E. 16	Jan. 12,	1903
2895.	Mortimer F. Smith, San Francisco	18 N. 15 E. 16 All.	Jan. 14,	"
2896.	Edwin Bonnell, 101 Montgomery St. San Fran.	13 N. 12 E. 36 All.	Jan. 14,	"
2897.	Horace Denny, 297 Montgomery St. San Fran.	16 N. 13 E. 36 All.	Jan. 14,	"
2898.	Arthur H. Denny, 207 Montgomery St. San Fran.	16 N. 13 E. 16 All.	Jan. 14,	"
2899.	Henry Mallary, 613 Minna St. San Fran.	19 N. 13 E. 36 W. 1/2.	Jan. 15,	"
2900.	Jno. S. Daley, 3 Fulton St. San Fran.	S. E. 1/4.	Jan. 15,	"
2901.	Chas. A. McDougall, 622 Hayes St. San Fran.	16 N. 11 E. 36 All.	Jan. 15,	"
2915.	Geo. J. Hasman, San Jose.	13 N. 12 E. 16 All.	Jan. 15,	"
2918.	Thos. J. Morton, 674 Geary St. San Fran.	7 N. 17 E. 16	Jan. 23,	"
		15 N. 14 E. 36	Jan. 27,	"

*Motion to Amend Bill of Particulars.*

Filed December 3, 1906.

In the Supreme Court of the District of Columbia.

No. 24141, Criminal Docket.

UNITED STATES

VS.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND, and  
JOOST H. SCHNEIDER.

Now comes the United States, by its attorney, and asks leave to amend the bill of particulars herein filed on August 4, 1906, in accordance with the list of amendments contained in the notice herewith attached and made part hereof.

DANIEL W. BAKER,

*U. S. Attorney, D. C.,**Attorney for United States.*

A. A. Birney, Esq.; A. S. Worthington, Esq.; R. Goden Donaldson, Esq., attorneys for defendants:

Please take notice that I will call up the above motion for hearing on Friday, December 7, 1906, in Criminal Court No. 1, at 10 o'clock, A. M. or so soon thereafter as counsel can be heard.

DANIEL W. BAKER,

*U. S. Attorney, D. C.,**Attorney for the United States.*

\* \* \* \* \*

151 Notice is hereby given that the United States will move the Court for leave to amend the bill of particulars filed in this case on motion of the defendants Hyde and Benson, as follows:

*First.* By striking from List B of said bill of particulars the following described lands:

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Sec. 16, T. 10 N., R. 29 W., S. B. M.

W.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , Sec. 16, T. 8 N., R. 27 W., S. B. M.

N.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , Sec. 36, T. 3 N., R. 10 W., N.  $\frac{1}{2}$ , S. W.  $\frac{1}{4}$ , and W.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , Sec. 36, T. 6 N., R. 18 W., S. B. M.

*Second.* By adding to List B of said bill of particulars the following described lands:

S. E.  $\frac{1}{4}$ , Sec. 36, T. 23 S., R. 30 E.; N. W.  $\frac{1}{4}$ , Sec. 36, T. 24 S., R. 31 E., and S.  $\frac{1}{2}$ , Sec. 36, T. 14 S., R. 32 E., M. D. M.

N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , Sec. 16, T. 26 S., R. 32 E., and E.  $\frac{1}{2}$ , Sec. 36, T. 27 S., R. 32 E., M. D. M.

All of Sec. 16, T. 26 S., R. 31 E., M. D. M.

All of Sec. 36, T. 12 S., R. 27 E., M. D. M.

All of Sec. 16, T. 2 N., R. 8 W., S. B. M.

All of Sec. 16, T. 4 N., R. 21 E., M. D. M.

*Third.* As to the tract of school land described in the fourth count of the indictment as the N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , Sec. 16, T. 6 N., R. 22 W., S. B. M., no evidence will be offered by the  
152 the government at the trial, and no claim will be made in respect thereof.

Supreme Court of the District of Columbia.

TUESDAY, *December 18, 1906.*

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

\* \* \* \* \*

No. 24141. Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES

vs.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND, and  
JOOST H. SCHNEIDER.

Come as well the Attorney of the United States as the defendant Frederick A. Hyde by his Attorney A. S. Worthington, Esquire, and the defendant John A. Benson by his Attorney A. A. Birney, Esquire; and, thereupon, the motion of the United States for leave to amend its bill of particulars heretofore filed herein, in accordance with the list of amendments contained in the notice filed with and attached to said motion, coming on to be heard and being argued and submitted, it is considered by the Court that leave be and hereby is granted the United States to amend its bill of particulars, filed herein August 4, 1906, in accordance with the list of amendments contained in the notice, filed herein December 3, 1906, and at-  
153 tached to said motion for leave to amend.

Upon motion of the Attorney of the United States this case is set to be tried on February 11, 1907.

FRIDAY, *March 20, 1908.*

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford, presiding.

\* \* \* \* \*

No. 24141. Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES

vs.

JOHN A. BENSON.

Come as well the Attorney of the United States as the defendant John A. Benson, by his Attorney A. A. Birney, Esquire; and, there-

upon, the said defendant, by his said attorney, files herein an application, supported by his affidavit, to have certain persons therein named summoned as witnesses in his behalf upon the trial of this cause at the expense and cost of the United States; and thereupon, the Attorney of the United States files herein his affidavit in opposition to the granting of such application as to certain of the persons designated in said last-mentioned affidavit; whereupon, after a partial argument of the said application and opposing affidavit, the further hearing thereof is, at the request of the said counsel on both sides, postponed to a day to be agreed upon by said counsel.

Whereupon the Attorney of the United States moves the  
 154 Court for leave to file herein an amendment to list B of the Bill of Particulars heretofore filed herein; and, thereupon, the Court grants such leave and said amendment is accordingly filed.

*Amendment to List B of Bill of Particulars.*

Filed in Open Court March 20, 1908.

In the Supreme Court of the District of Columbia.

No. 24141. Criminal Doc.

UNITED STATES

VS.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND, and  
 JOOST H. SCHNEIDER.

Notice is hereby given that at the trial of this case the United States will not offer evidence as to the following tracts of land in the State of California:

1. The school lands described in List B of the Bill of Particulars as follows:

All of Sec. 16, T. 9 N., R. 25 W., S. B. M.

S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  Sec. 16, T. 11 S., R. 29 E., N.  $\frac{1}{2}$  & S. W.  $\frac{1}{4}$ ,  
 Sec. 36, T. 11 S., R. 29 E., and S. W.  $\frac{1}{4}$  Sec. 16, T. 10 S., R. 30 E.,  
 M. D. M.

All of Sec. 36, T. 22, S., R. 35 E., D. M.

All of Sec. 16, T. 8 N., R. 25 W., S. B. M.

All of Sec. 36, T. 7 S., R. 3 E., S. B. M.

All of Sec. 13, T. 7 N., R. 28 W., S. B. M.

E.  $\frac{1}{2}$ , S. W.  $\frac{1}{4}$  Sec. 36, T. 8 N., R. 19 W., W.  $\frac{1}{2}$  of N. W.  
 155  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 36, T.  
 8 N., R. 18 W., S. B. M.

2. The school lands described in Count 29 of the indictment as the  
 E.  $\frac{1}{2}$ , S. W.  $\frac{1}{4}$ , and the E.  $\frac{1}{2}$  of the N. W.  $\frac{1}{4}$ , Sec. 36, T. 25 S., R.  
 23 E., M. D. M., and the lands described in List A of the Bill of  
 Particulars as the W.  $\frac{1}{2}$  of the N. W.  $\frac{1}{4}$ , Sec. 36, T. 25 S., R. 33  
 E., M. D. M.

DANIEL W. BAKER,  
 U. S. Attorney for D. C.

156 *Plea in Abatement of Defendant Frederick A. Hyde.*

Filed in Open Court April 1, 1908.

In the Supreme Court of the District of Columbia, Holding a  
Criminal Term.

No. 24141, Crim. Doc.

UNITED STATES

vs.

FREDERICK A. HYDE, JOHN A. BENSON, JOOST A. SCHNEIDER,  
HENRY P. DIMOND.

The said Frederick A. Hyde one of the defendants in his own proper person, comes into Court, and having heard the indictment in this case read, says that heretofore, to wit, on the 2nd day of January, 1902, and thence continuously till the present time, one John R. Young, then Clerk of the Supreme Court of the District of Columbia, Aulick Palmer, then Marshal of the District of Columbia, and Eldridge G. Davis, then Collector of Taxes of the District of Columbia, constituted the Commission to make the list of jurors for service in the Supreme Court of the District of Columbia and to fix the number of jurors to be listed therefrom, pursuant to section 198 of the Code of Laws for the District of Columbia; that from, to wit, the 2nd day of January, 1902, till the 20th day of November, 1903, said Commission continuously placed on said list the names of persons, many of which were selected not by themselves or by any of them, but by some other person or persons whose names are to this defendant unknown, that on, to wit, the 16th day of November, 157 1903, said Commissioners met in the District of Columbia, and then and there made an order by which they undertook to appoint one James A. Hartsock, Secretary of said Commission, and then and there made a further order by which they undertook to give said Hartsock the right of access to the box containing the names of such jurors, said box being a box theretofore provided in accordance with section 200 of said Code of Laws; that thereafter, to wit, on or about the 10th day of January, 1904, and prior to the 20th day of January, 1904, said Hartsock (pursuant to said supposed authority, and by the consent of said John R. Young, who then and there had the custody of said box) unaccompanied by any other person or persons, took said box into a certain room in the City Hall of the District of Columbia (being the building in which said Supreme Court of the District holds its sessions), and opened said box and took out therefrom all the pieces of paper therein containing the names of jurors, and from day to day during several successive days replaced in said box such of said names only as he deemed fit and proper to be replaced, and thereupon returned said box to the custody of said John R. Young, Clerk as aforesaid; that thereafter, on to wit, the 20th day of January, 1904, the names of twenty-three persons

required to serve as grand jurors in said Supreme Court of the District of Columbia were drawn from said box, pursuant to section 204 of said Code of Laws, and the grand jury whose term of service began on the first Tuesday of February, 1904, was composed of persons whose names were so drawn from said box after said James A. Hartsock had been given, and had exercised, control over the contents of said box, as hereinabove set forth; and said grand jury found and returned the indictment in this case.

And this defendant further says that between the time that said James A. Hartsock obtained access to said box as aforesaid, and the time that the names of the persons constituting said grand jury were drawn therefrom, as aforesaid, no papers containing names of persons were placed in said box by said Commission or any member thereof, or by any person acting in behalf of said Commission; but that, on the contrary, the only names left in said box from which the names of said grand jurors were so drawn were the names of those selected in manner aforesaid by said James A. Hartsock.

And this defendant further says that by reason of all the foregoing, the grand jury which returned the indictment in this case was not a legal body, and that it had no power to return a valid indictment against this defendant.

Wherefore he prays judgment of said indictment, and that the same may be quashed.

FREDERIC A. HYDE.

I, Frederick A. Hyde, on oath say that I am one of the defendants in the above entitled cause; that I have read the foregoing plea by me subscribed; that the statements therein made are true to the best of my knowledge and belief.

FREDERIC A. HYDE

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 1st day of April, 1908.

J. R. YOUNG, *Clerk*,

By S. McC. HAWKEN, *Ass't Clerk*.

*Plea in Abatement of Defendant Joost H. Schneider.*

Filed in Open Court April 1, 1908.

In the Supreme Court of the District of Columbia. Holding a Criminal Term.

No. 24141, Crim. Doc.

UNITED STATES

VS.

FREDERICK A. HYDE, JOHN A. BENSON, JOOST A. SCHNEIDER,  
HENRY P. DIMOND.

The said Joost H. Schneider one of the defendants in his own proper person, comes into Court, and having heard the indictment

in this case read, says that heretofore, to wit, on the 2nd day of January, 1902, and thence continuously till the present time, one John R. Young, then Clerk of the Supreme Court of the District of Columbia, Aulick Palmer, then Marshal of the District of Columbia, and Eldridge G. Davis, then Collector of Taxes of the District of Columbia, constituted the Commission to make the list of jurors for service in the Supreme Court of the District of Columbia and to fix the number of jurors to be listed therefrom, pursuant to section 198 of the Code of Laws for the District of Columbia; that from, to wit, the 2nd day of January, 1902, till the 20th day of November, 1903, said Commission continuously placed on said list the names of persons, many of which were selected not by themselves or by any of them, but by some other person or persons whose

161 names are to this defendant unknown; that on, to wit, the 16th day of November, 1903, said Commissioners met in the District of Columbia, and then and there made an order by which they undertook to appoint one James A. Hartsock, Secretary of said Commission, and then and there made a further order by which they undertook to give said Hartsock the right of access to the box containing the names of such jurors, said box being a box theretofore provided in accordance with section 200 of said Code of Laws; that thereafter, to wit, on or about the 10th day of January, 1904, and prior to the 20th day of January, 1904, said Hartsock (pursuant to said supposed authority, and by the consent of said John R. Young, who then and there had the custody of said box) unaccompanied by any other person or persons, took said box into a certain room in the City Hall of the District of Columbia (being the building in which said Supreme Court of the District holds its sessions), and opened said box and took out therefrom all the pieces of paper therein containing the names of jurors, and from day to day during several successive days replaced in said box such of said names only as he deemed fit and proper to be replaced, and thereupon returned said box to the custody of said John R. Young, Clerk as aforesaid; that thereafter, on to wit, the 20th day of January, 1904, the names of twenty-three persons required to serve as grand jurors in said Supreme Court of the District of Columbia were drawn from said box, pursuant to section 204 of said Code of Laws, and the grand jury whose term of service began on the first Tuesday of February,

162 1904, was composed of persons whose names were so drawn from said box after said James A. Hartsock had been given, and had exercised, control over the contents of said box, as hereinabove set forth; and said grand jury found and returned the indictment in this case.

And this defendant further says that between the time that said James A. Hartsock obtained access to said box as aforesaid, and the time that the names of the persons constituting said grand jury were drawn therefrom, as aforesaid, no papers containing names of persons were placed in said box by said Commission or any member thereof, or by any person acting in behalf of said Commission; but that, on the contrary, the only names left in said box from which the names of said grand jurors were so drawn were the



names of those selected in manner aforesaid by said James A. Hartsock.

And this defendant further says that by reason of all the foregoing, the grand jury which returned the indictment in this case was not a legal body, and that it had no power to return a valid indictment against this defendant.

Wherefore he prays judgment of said indictment, and that the same may be quashed.

JOOST H. SCHNEIDER.

R. GOLDEN DONALDSON,  
*Attorney for Defendant.*

I, Joost H. Schneider, on oath say that I am one of the defendants in the above entitled cause; that I have read the foregoing plea by me subscribed; that the statements therein made are true to the best of my knowledge and belief.

JOOST H. SCHNEIDER.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 1st day of April, 1908.

J. R. YOUNG, *Clerk*,

By S. McC. HAWKEN, *Ass't Clerk*.

163 *Demurrer to Each Plea in Abatement by U. S.*

Filed in Open Court April 1, 1908.

In the Supreme Court of the District of Columbia.

Criminal. No. 24141.

U. S.

vs.

HYDE et al.

The United States says that said pleas in abatement are bad in substance.

DANIEL W. BAKER,  
*U. S. Attorney for D. C.*

*Points and Authorities.*

1. The said pleas are not filed within reasonable time.
2. That said pleas do not show any person or persons on said jury that had not the right to be there.
3. That said jury Commissioners had a right to have assistance in the placing of names in the box or in the withdrawal of surplus names from said jury box.

That said pleas are uncertain indefinite and state conclusions of law.

That said pleas in abatement are filed without leave of Court.

That said pleas alleged no facts that show injury or damage to defendants or any of them.

164 Supreme Court of the District of Columbia.

WEDNESDAY, *April 1, 1908.*

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford, presiding.

No. 24141. Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES

vs.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND and  
JOOST H. SCHNEIDER.

Come as well Daniel W. Baker, Attorney of the United States in and for the District of Columbia, and Arthur B. Pugh, Special Assistant to the Attorney General of the United States, as the said defendants, in proper person, according to their recognizances, and by their respective attorneys, to wit: Attorneys A. S. Worthington and R. Golden Donaldson, Esquires, for the defendant Frederick A. Hyde; Attorneys Arthur A. Birney and J. C. Campbell, Esquires, for the defendant John A. Benson; Attorney Frank F. Van Der-  
veer, Esquire, for the defendant Henry P. Dimond, and Attorney R. Golden Donaldson, Esquire, for the defendant Joost H. Schneider; and, thereupon, each of said defendants files herein a plea in abatement to the indictment in this case; whereupon the United States files a demurrer to each of said pleas; and the same being heard, it is considered by the Court that the said demurrer to each of said  
165 pleas in abatement be, and the same hereby is, sustained, and that each of said pleas be, and the same hereby is, adjudged insufficient; whereupon each of said defendants notes an exception to such action of the Court.

Thereupon, it is considered by the Court that the demurrer filed herein November 13, 1905, by the said defendant Henry P. Dimond to the indictment in this case be, and the same hereby is overruled.

Thereupon, the said defendant Frederick A. Hyde being arraigned upon the indictment herein waives the reading thereof, pleads thereto not guilty and for trial puts himself upon the Country and the Attorney of the United States doth the like.

Thereupon, the said defendant Henry P. Dimond being arraigned upon the said indictment waives the reading thereof, pleads thereto not guilty and for trial puts himself upon the Country and the Attorney of the United States doth the like.

Thereupon the said defendant Joost H. Schneider moves the Court for leave to file herein a further plea in abatement; whereupon the Court denies said motion and refuses to grant such leave; and, thereupon, the said defendant Joost H. Schneider being arraigned upon the said indictment waives the reading thereof, pleads thereto not guilty and for trial puts himself upon the Country and the Attorney of the United States doth the like.

Thereupon, the said defendant John A. Benson files a special plea

166 in bar to the indictment in this case; whereupon the United States files a demurrer to said special plea, and the same being argued by counsel is taken under consideration by the Court.

THURSDAY, April 2, 1908.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

No. 24141. Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES

VS.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND and  
JOOST H. SCHNEIDER.

Come again the parties aforesaid, in manner as aforesaid; and, thereupon, it is considered by the Court that the demurrer of the United States to the special plea in bar filed yesterday by the defendant John A. Benson be, and the same hereby is, sustained, and that said special plea be, and the same hereby is, adjudged insufficient; whereupon the defendant John A. Benson notes an exception to such action of the Court; and, thereupon, the defendant John A. Benson being arraigned upon the indictment herein waives the reading thereof, pleads thereto not guilty and for trial puts himself upon the Country and the Attorney of the United States doth the like.

Thereupon, each of the defendants John A. Benson, Henry P. Dimond and Joost H. Schneider moves the Court to summon  
167 on his behalf, at the expense and cost of the United States, such witnesses as he may show during the course of the trial of this case to be necessary for his defense; whereupon each of said motions is taken under consideration by the Court; and, thereupon, the said defendants Frederick A. Hyde, John A. Benson, Henry P. Dimond and Joost H. Schneider being called for trial, it is ordered by the Court that a jury to try the issues joined herein be impanelled; whereupon, the jurors of the regular petit jury panel being called, sworn upon their voir dire and examined as to their competency for trying the said issues, the said panel is exhausted by reason of challenges and excuses without said jury having been completed; and, thereupon, to complete the same, the Clerk is ordered to draw from the jury-box in his custody the names of one hundred (100) other persons and the Marshal is ordered to summon the persons whose names are so drawn to appear in this Court tomorrow at 10 o'clock A. M.; which names are accordingly drawn; whereupon, the eleven jurors now upon the trial panel are respited until the meeting of the Court tomorrow at 10 o'clock A. M. and they retire from the bar in custody of bailiffs Roberts and Hawkins who are ordered to keep the said jurors together in some convenient and private place.

It is ordered that the Marshal provide food and accommodations

for the jurors on the trial panel of this case and the bailiffs in attendance thereon during the progress of the trial.

168

FRIDAY, April 3, 1908.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

No. 24141. Indicted for Violation of Section 5440, R. S. U. S.

## UNITED STATES

vs.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND and  
JOOST H. SCHNEIDER.

Come again the parties aforesaid, in manner as aforesaid, and the same eleven jurors who were on the trial panel at the time of adjournment yesterday, in custody as aforesaid; whereupon, the Marshal makes return into Court of the names of persons drawn yesterday, pursuant to the order of this Court, by the Clerk from the jury-box in his custody to complete the jury to try the issues joined herein, with the manner and date of service endorsed thereon, as follows, to wit:

\* \* \* \* \*

And, thereupon, the said persons above named being called, sworn upon their voir dire, and examined as to their qualifications for jury service and as to their competency for trying the said issues, the said drawing is exhausted by reason of challenges and excuses without the said jury having been completed; and, thereupon, to complete the same, the Clerk is ordered to draw from the jury-box

169 in his custody the names of twenty-five (25) other persons and the Marshal is ordered to summon the persons whose names are so drawn to appear in this Court Monday next at 10 o'clock A. M.; whereupon the said names are accordingly drawn; and, thereupon, the eleven jurors now upon the trial panel are respited until Monday next at 10 o'clock A. M. and they retire from the bar in custody of bailiffs Roberts and Hawkins who are ordered to keep the said jurors together in some convenient and private place until that time.

It is ordered that the Marshal pay the lawful fees of the U. S. Witnesses in attendance upon this Court today as certified to by the Clerk of Court and the Foreman of the Grand Jury respectively.

The members of the regular petit jury panel who were challenged today from the trial panel in the case of the United States vs. Frederick A. Hyde et al. are discharged and the Marshal is ordered to pay them the lawful fees for their attendance as certified to by the Clerk.

SATURDAY, *April 4, 1908.*

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

No. 24141. Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES

VS.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND and  
JOOST H. SCHNEIDER.

170 Come again the parties aforesaid, in manner as aforesaid; and, thereupon, on motion of the said defendants by their said attorneys and on motion of the Attorney of the United States, it is ordered that to complete the jury to try the issues herein the clerk draw from the jury-box in his custody the names of twenty-five (25) persons in addition to those ordered drawn yesterday, and the Marshal is ordered to summon the persons whose names are so drawn to appear in this Court Monday next at 10 o'clock A. M.; whereupon said names are accordingly drawn.

MONDAY, *April 6, 1908.*

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

\* \* \* \* \*

No. 24141. Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES

VS.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND and  
JOOST H. SCHNEIDER.

Come again the parties aforesaid, in manner as aforesaid, and the same eleven jurors who were on the trial panel at the time of adjournment Friday last in custody as aforesaid; whereupon the Marshal makes return into Court of the names of persons drawn Friday last pursuant to the order of this Court by the clerk from the jury-box in his custody to complete the jury to try the issues joined  
171 herein, with the date and manner of service endorsed thereon, as follows, to wit:

\* \* \* \* \*

And, thereupon, the said persons above named being called, sworn upon their voir dire and examined as to their qualifications for jury service and as to their competency for trying the said issues, the said drawing is exhausted by reason of challenges and excuses without the said jury having been completed; and, thereupon, the Marshal makes return into Court of the names of persons drawn Saturday last pursuant to the order of this Court by the Clerk from the jury-box in his custody to complete the said jury with the date and manner of service endorsed thereon as follows, to wit:

\* \* \* \* \*

And, thereupon, the said persons last above named being called, sworn upon their voir dire and examined as to their qualifications for jury service and as to their competency for trying the said issues, the said last mentioned drawing is also exhausted without the said jury having been completed; and, thereupon, to complete the same, the Clerk is ordered to draw from the jury-box in his custody the names of one hundred (100) other persons and the Marshal is ordered to summon the persons whose names are so drawn to appear in this Court forthwith, whereupon the said names are accordingly drawn; and, thereupon, the Marshal makes return into Court of such names with the date and manner of service endorsed thereon, as follows, to wit:

\* \* \* \* \*

172 who being called and those responding being sworn upon their voir dire and examined as to their qualifications for jury-service and as to their competency for trying the said issues joined in this case, the said jury is completed, which is composed of good and lawful men of the District of Columbia, to wit:

- |                     |                         |
|---------------------|-------------------------|
| 1. Frank W. Ross    | 7. Bennett A. Fowler    |
| 2. Edward H. Jett   | 8. Owen S. Lacey        |
| 3. Elmer H. Catlin  | 9. Louis A. Everett     |
| 4. Charles P. Hart  | 10. Sterling A. Gardner |
| 5. Henry P. Elliott | 11. Joseph Baruch       |
| 6. Alfred B. Dent.  | 12. John J. Nolan       |

who are sworn well and truly to try the issues joined in this case; and, thereupon, it is ordered that the Marshal keep the said jury together during the progress of the trial; whereupon the said jury are res-pited until the meeting of the Court tomorrow at 10 o'clock A. M. and they retire from the bar in custody of bailiffs Roberts, Hawkins and Stutler who are sworn well and truly to keep the said jury to-gether in some convenient and private place and not to suffer any person to speak to said jury, nor any member thereof, concerning this case, and not to speak to said jury, nor any member thereof, themselves concerning the said case.

Thereupon, The Title Guaranty & Trust Company, of Scranton, Pa., surety for the defendant John A. Benson on the recognizance taken in this case surrenders the said defendant John A. Benson to the custody of the Court and prays that it, the said surety  
173 may be released and exonerated from further obligation upon said recognizance which is so ordered and the said defendant John A. Benson is taken into custody by the Marshal.

Thereupon, the said defendant John A. Benson moves the Court to fix the amount of the bail to be required of him herein; where-upon the Court fixes said bail in the sum of Five Thousand (5000.) Dollars; and, thereupon the said defendant John A. Benson enters into a recognizance in the sum of Five Thousand (5000) Dollars with The Title Guaranty & Surety Company as his surety, approved by the Court for his, said defendant's, appearance in this Court from day to day at the present and subsequent terms thereof and answer the indictment herein pending against him until the same shall be

finally disposed of or if he, the said defendant, depart the Court without leave.

It is ordered that the Marshal provide food and accommodations for the jury sworn in this case and the bailiffs in attendance thereon during the progress of the trial.

174 Supreme Court of the District of Columbia.

MONDAY, June 22, 1908.

The Court resumes its session pursuant to recess, Mr. Justice Stafford, presiding.

No. 24141. Indicted for Violation of Section 5440 R. S. U. S.

UNITED STATES

VS.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND and  
JOOST H. SCHNEIDER.

Come again the parties aforesaid, in manner as aforesaid, and the same jury that retired Friday last to consider of their verdicts, in custody as aforesaid; and, thereupon, the said jury, being called and asked if they have agreed upon their verdicts, upon their oath say that the said defendant Frederick A. Hyde is guilty in manner and form as charged in the first (1st), second (2d), third (3d), fourth (4th), fifth (5th), sixth (6th), seventh (7th), eighth (8th), ninth (9th), tenth (10th), eleventh (11th), twelfth (12th), thirteenth (13th), fourteenth (14th), fifteenth (15th), sixteenth (16th), seventeenth (17th), eighteenth (18th), nineteenth (19th), twentieth (20th), twenty-first (21st), twenty-second (22d), twenty-third (23d), twenty-fourth (24th), twenty-fifth (25th), twenty-sixth (26th), twenty-seventh (27th), twenty-eighth (28th), thirtieth (30th), thirty-first (31st), thirty-second (32d), thirty-fourth (34th), thirty-fifth (35th), thirty-sixth (36th), thirty-seventh (37th),

175 thirty-eighth (38th), thirty-ninth (39th), fortieth (40th), forty-first (41st), and forty-second (42d) counts of the indictment herein; the said jury upon their oath further say that the said defendant Joost H. Schneider is also guilty in manner and form as charged in the first (1st), second (2d), third (3d), fourth (4th), fifth (5th), sixth (6th), seventh (7th), eighth (8th), ninth (9th), tenth (10th), eleventh (11th), twelfth (12th), thirteenth (13th), fourteenth (14th), fifteenth (15th), sixteenth (16th), seventeenth (17th), eighteenth (18th), nineteenth (19th), twentieth (20th), twenty-first (21st), twenty-second (22d), twenty-third (23d), twenty-fourth (24th), twenty-fifth (25th), twenty-sixth (26th), twenty-seventh (27th), twenty-eighth (28th), thirtieth (30th), thirty-first (31st), thirty-second (32d), thirty-fourth (34th), thirty-fifth (35th), thirty-sixth (36th), thirty-seventh (37th), thirty-eighth (38th), thirty-ninth (39th), fortieth (40th), forty-first (41st) and forty-second (42d) counts of the indictment herein; the said jury upon their oath further say that the said defendant John A.

Benson is not guilty in manner and form as charged in the said indictment, nor in any count thereof; whereupon it is considered by the Court that the said defendant John A. Benson go as to the said indictment and each count thereof without day; and the said jury upon their oath further say that the said defendant Henry P. Dimond is not guilty in manner and form as charged in the said indictment, nor in any count thereof; whereupon it is considered by

the Court that the said defendant Henry P. Dimond go as  
176 to the said indictment and each count thereof without day;

and, thereupon, on motion of the attorney for the said defendant Frederick A. Hyde, the said jury is polled as to him on the first (1st) count of the said indictment and each member thereof upon his oath says that the said defendant Frederick A. Hyde is guilty in manner and form as charged in the first (1st) count of the said indictment; and, thereupon, on motion of the attorney for the said defendant Joost H. Schneider the said jury is also polled as to him on the first (1st) count of the said indictment and each member thereof upon his oath says that the said defendant Joost H. Schneider is guilty in manner and form as charged in the first (1st) count of the said indictment; and, thereupon, by direction of the Court, the said jury upon their oath say that the said defendants Frederick A. Hyde and Joost H. Schneider are not guilty in manner and form as charged in the twenty-ninth (29th) and thirty-third (33d) counts of the said indictment; whereupon, it is considered by the Court that each of the said defendants Frederick A. Hyde and Joost H. Schneider go as to each of said twenty-ninth (29th) and thirty-third (33d) counts of said indictment without day.

Whereupon the said defendants Frederick A. Hyde and Joost H. Schneider by their respective attorneys give notice of their intention to file motions for a new trial and in arrest of judgment.

And, thereupon, the said jury is discharged by the Court and the Marshal is ordered to pay them the lawful fees for their attendance as certified to by the Clerk.

177 *Motion for New Trial by Frederick A. Hyde, &c.*

Filed June 26, 1908.

In the Supreme Court of the District of Columbia.

No. 24141. Crim. Doc.

UNITED STATES

vs.

FREDERICK A. HYDE et al.

Now comes the defendant, Frederick A. Hyde, and moves the Court to grant a new trial in this case upon the following grounds:

1. Because of errors of law committed by the Court in the admission or rejection of evidence during the trial.

2. Because of errors of law committed by the Court in giving or refusing instructions to the jury.



3. Because the verdict was contrary to the evidence.

4. Because the verdict was contrary to the instructions of the Court.

5. Because unless the defendant, John A. Benson, (as to whom a general verdict of Not Guilty was rendered) was a party to the conspiracy charged in the indictment in this case, and each count thereof, the conspiracy charged in said indictment could not have existed.

6. Because as to the counts of said indictment numbered 2 to 14, inclusive; 15 to 21, inclusive; 23 to 28, inclusive; 30, 31 and 34, the verdict of Not Guilty as to the Defendant Dimond establishes that as to those counts no overt act in pursuance of the conspiracy charged in the indictment was committed, as alleged in said counts.

7. Because as to counts 1, 15 and 22, inclusive; no evidence was offered at the trial that the defendant Hyde committed any of the overt acts mentioned in said counts in this District and the verdict of Not Guilty as to the defendant, Dimond, establishes the fact that no overt act alleged in said counts, respectively, to have been committed by said Dimond could have been committed in this District in pursuance of said alleged conspiracy.

8. Because as to counts numbered 35 to 42, inclusive, the only evidence offered at the trial as to the overt acts referred to in said counts, respectively, showed that such overt acts were committed, if at all, by the defendant, Benson, and the verdict of Not Guilty as to said Benson establishes the fact that if such overt acts were committed by said Benson as alleged in said counts, respectively, they were not, and could not have been, committed in pursuance of the conspiracy charged in the indictment.

9. Because the long confinement of the jury during the trial and after the jury had retired to consider their verdict had the effect of coercing the jury to agree upon a verdict.

10. Because of mis-conduct of the jury, among other things in this, that their verdict against this defendant was the result of an agreement made in the jury room after the jury had retired to consider their verdict between some of the jurors, whose judgment and opinion on the evidence was that all the defendants should be convicted, and others of the jurors, whose judgment and opinion on the evidence was that all the defendants should be acquitted, and which agreement was in substance that if those of the jurors who were in favor of convicting the defendant Benson would join in a verdict of acquittal as to him, those who were in favor of acquitting the defendant Hyde would join in a verdict of conviction as to him; and that if those of the jurors whose opinion on the evidence was that all the defendants should be convicted would vote for the acquittal of the defendant Dimond, those who were in favor of acquitting all the defendants would vote for the conviction of the defendant Schneider.

A. S. WORTHINGTON,  
*Attorney for Frederick A. Hyde.*

## DISTRICT OF COLUMBIA, ss:

I, Augustus S. Worthington, on oath say that I am of counsel for the defendant, Frederick A. Hyde, and have as his attorney signed the foregoing motion for a new trial. The grounds set forth in paragraph numbered ten of said motion are based upon information which I believe to be true obtained by me partly from Sterling J. Gardner and partly upon information obtained by me from Mr. R. Golden Donaldson as to conversations by him with the juror,

180 Joseph Baruch. I have personally requested said Gardner and another of said jurors, John J. Nolan, to make affidavit in respect to the allegations made in said paragraph numbered ten, but they have both declined to do so upon the advice of their own counsel, stating that they would make no statement in regard to the matter unless required to do so by the Court.

This affidavit is made by me instead of my client, Frederick A. Hyde, for the reason that he has left the District of Columbia and is now, as I believe, on his way to his home in California.

This affidavit is executed at half past three o'clock on the afternoon of Friday, June 26th, 1908, a half hour before the time within which, under the rules of Court, the motion for a new trial must be filed, and it is impracticable for me within that time to apply to the others of said jurors for the purpose of obtaining affidavits or information as to the truth of the allegations made in said paragraph numbered ten.

AUGUSTUS S. WORTHINGTON.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 26th day of June, A. D., 1908.

[SEAL.]

HARRY H. HOLLANDER,

*Notary Public, D. C.*

181 Supreme Court of the District of Columbia.

FRIDAY, June 26, 1908.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford, presiding.

\* \* \* \* \*

No. 24142. Crim. Doc. 24.

UNITED STATES

vs.

FREDERICK A. HYDE et al.

Now comes the defendant, Frederick A. Hyde, and moves the Court to arrest the entry of judgment upon the verdict upon the indictment in this case, and each count thereof on the following grounds:

I. Because neither the said indictment, nor any count thereof, sets forth facts which if true would amount to a criminal offense

against the laws of the United States. (The special grounds relied upon under this heading are those set forth and made of record in this case in support of the demurrer filed by this defendant to the indictment.)

2. Because the verdict of not guilty as to the defendant Benson establishes the fact that there could not have been any such conspiracy between this defendant and any of his co-defendants as is charged in the indictment in this case.

3. Because the verdict of not guilty as to the defendant Dimond establishes the fact that there could not have been any such  
182 conspiracy or overt act in pursuance thereof as is charged in counts 2 to 14, inclusive; 15 to 21, inclusive; 23 to 28, inclusive; 30, 31 and 34.

4. Because the verdict of not guilty as to the defendant Benson establishes the fact that there could not have been any such conspiracy or overt act in pursuance thereof as is charged in counts 35 to 42 inclusive.

A. S. WORTHINGTON,  
*Attorney for Frederick A. Hyde.*

183 *Motion for New Trial by Joost H. Schneider.*

Filed June 26, 1908.

In the Supreme Court of the District of Columbia.

No. 24141. Crim. Doc.

UNITED STATES  
vs.  
FREDERICK A. HYDE et al.

Now comes the defendant, Joost H. Schneider, and moves the Court to grant a new trial in this case upon the following grounds:

1. Because of errors of law committed by the Court in the admission or rejection of evidence during the trial.

2. Because of errors of law committed by the Court in giving or refusing instructions to the jury.

3. Because the verdict was contrary to the evidence.

4. Because the verdict was contrary to the instructions of the Court.

5. Because unless the defendant, John A. Benson, (as to whom a general verdict of Not Guilty was rendered) was a party to the conspiracy charged in the indictment in this case, and each count thereof, the conspiracy charged in said indictment could not have existed.

6. Because as to the counts of said indictment numbered 2 to 14, inclusive; 15 to 21, inclusive; 23 to 28, inclusive; 30, 31 and 34,  
184 the verdict of Not Guilty as to the defendant Dimond establishes that as to those counts no overt act in pursuance of the conspiracy charged in the indictment was committed, as alleged in said counts.

7. Because as to counts 1, 15 and 22, inclusive; no evidence was offered at the trial that the defendant Hyde committed any of the overt acts mentioned in said counts in this District and the verdict of Not Guilty as to the defendant, Dimond, establishes the fact that no overt act alleged in said counts, respectively, to have been committed by said Dimond could have been committed in this District in pursuance of said alleged conspiracy.

8. Because as to counts numbered 35 to 42, inclusive, the only evidence offered at the trial as to the overt acts referred to in said counts, respectively, showed that such overt acts were committed, if at all, by the defendant, Benson, and the verdict of Not Guilty as to said Benson establishes the fact that if such overt acts were committed by said Benson as alleged in said counts, respectively, they were not, and could not have been, committed in pursuance of the conspiracy charged in the indictment.

9. Because the long confinement of the jury during the trial and after the jury had retired to consider their verdict had the effect of coercing the jury to agree upon a verdict.

10. Because of mis-conduct of the jury, among other things in this, that their verdict against this defendant was the result of an agreement made in the jury room after the jury had retired to consider their verdict between some of the jurors, whose judgment and

185 opinion on the evidence was that all the defendants should be convicted, and others of the jurors, whose judgment and

opinion on the evidence was that all the defendants should be acquitted, and which agreement was in substance that if those of the jurors who were in favor of convicting the defendant Benson would join in a verdict of acquittal as to him, those who were in favor of acquitting the defendant Hyde would join in a verdict of conviction as to him; and that if those of the jurors whose opinion on the evidence was that all the defendants should be convicted would vote for the acquittal of the defendant Dimond, those who were in favor of acquitting all the defendants would vote for the conviction of the defendant Schneider.

R. GOLDEN DONALDSON,

*Attorney for Joost H. Schneider.*

DISTRICT OF COLUMBIA, 88:

I, R. Golden Donaldson, on oath say that I am counsel for the defendant, Joost H. Schneider, and have as his attorney signed the foregoing motion for a new trial. The grounds set forth in paragraph numbered ten of said motion are based upon information which I believe to be true obtained by me from two of said jurors, Sterling J. Gardner and Joseph Baruch. I have personally requested said Gardner and another of said jurors, John J. Nolan, to make affidavit in respect to the allegations made in said paragraph ten, but they have both declined to do so upon the advice of their own counsel, stating that they would make no statement in regard to the matter unless required to do so by the Court.

186 This affidavit is made by me instead of my client Joost H. Schneider for the reason that he has left the District of Col-

umbia and is now, as I believe, on his way to his home in Tucson, Arizona.

This affidavit is executed at three thirty o'clock on the afternoon of Friday, June 26th, 1908, but a half an hour before the time within which under the rules of Court the motion for a new trial must be filed, and it is impracticable for me within that time to apply to the others of said jurors for the purpose of obtaining affidavits or information as to the truth of the allegations made in said paragraph numbered ten.

R. GOLDEN DONALDSON.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 26th day of June, A. D., 1908.

[SEAL.]

HARRY H. HOLLANDER,

*Notary Public, D. C.*

187 Supreme Court of the District of Columbia.

FRIDAY, June 26, 1908.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford, presiding.

\* \* \* \* \*

No. 24141. Crim. Doc. 24.

UNITED STATES

VS.

FREDERICK A. HYDE et al.

Now comes the defendant, Joost H. Schneider, and moves the Court to arrest the entry of judgment upon the verdict upon the indictment in this case, and each count thereof, on the following grounds:

1. Because neither said indictment, nor any count thereof, sets forth facts which if true would amount to a criminal offense against the laws of the United States. (The special grounds relied upon under this heading are those set forth and made of record in this case in support of the demurrer filed by this defendant to the indictment.)

2. Because the verdict of not guilty as to the defendant Benson established the fact that there could not have been any such conspiracy between this defendant and any of his co-defendants as is charged in the indictment in this case.

3. Because the verdict of not guilty as to the defendant Dimond establishes the fact that there could not have been any such conspiracy or overt act in pursuance thereof as is charged in  
188 counts 2 to 14, inclusive; 15 to 21, inclusive; 23 to 28, inclusive; 30, 31 and 34.

4. Because the verdict of not guilty as to the defendant Benson establishes the fact that there could not have been any such con-

spiracy or overt act in pursuance thereof as is charged in counts 35 to 42 inclusive.

R. GOLDEN DONALDSON,

*Attorney for Joost H. Schneider.*

Come as well the Attorney of the United States as the defendants, Frederick A. Hyde and Joost H. Schneider, by their respective attorneys of record; and, thereupon, on motion of the said defendants by their said attorneys and of the Attorney of the United States and for good cause shown, it is ordered by the Court that the motions for a new trial and in arrest of judgment filed herein this day by said defendants be, and the same hereby are, continued for hearing to the October Term, 1908, of this Court; that the time within which to submit said motions to the Court be, and the same hereby is, extended to and including the 1st day of November, 1908, and that this cause be, and the same hereby is, continued to the October Term, 1908, of this Court for such action by the Court upon the verdict of the jury rendered herein finding said defendants guilty as may be proper.

189 Supreme Court of the District of Columbia.

MONDAY, *October 5, 1908.*

The Court resumes its session pursuant to adjournment, Mr. Chief Justice Clabaugh, presiding.

\* \* \* \* \*

No. 24141. Convicted of Violation of Section 5440, R. S. U. S.

UNITED STATES

vs.

FREDERICK A. HYDE and JOOST H. SCHNEIDER.

It is ordered by the Court that the April Term 1908 of this Court be and the same hereby is prolonged for the period of thirty-eight (38) days exclusive of Sundays for the purpose of settling the bill of exceptions in this case.

190 *Motion by Hyde to Examine Jurors Under Oath.*

Filed Oct. 27, 1908.

In the Supreme Court of the District of Columbia.

No. 24141, Crim. Doc.

UNITED STATES

vs.

FREDERICK A. HYDE et al.

Now comes the defendant, Frederick A. Hyde, by his attorney of record, A. S. Worthington, and moves the court to permit him to take

in open Court the testimony under oath of the jurors, or some of them, who sat in the above entitled case and rendered a verdict of guilty against this defendant, as to the matters referred to in paragraphs numbered 9 and 10 of the motion for a new trial filed on behalf of this defendant in said case, and in the affidavit filed in support of that motion.

A. S. WORTHINGTON,

*Attorney for Defendant, Frederick A. Hyde.*

To D. W. Baker, Esq., Att'y for United States:

Please take notice that I shall call up the foregoing motion before Mr. Justice Stafford in Criminal Court, No. 1, on Friday, the 23rd day of October, 1908, at the opening of the Court, or as soon thereafter as counsel can be heard.

A. S. WORTHINGTON,

*Attorney for Defendant, Frederick A. Hyde.*

Service of copy of foregoing motion & notice acknowledged this 20th day of October 1908.

F. SPRIGG PERRY,

*Asst. U. S. Attorney, D. C.*

191 *Motion by Schneider to Examine Jurors Under Oath.*

Filed Oct. 27, 1908.

In the Supreme Court of the District of Columbia.

No. 24141, Crim. Doc.

UNITED STATES

vs.

FREDERICK A. HYDE et al.

Now comes the defendant, Joost H. Schneider, by his attorney of record, R. Golden Donaldson, and moves the court to permit him to take in open court the testimony under oath of the jurors, or some of them, who sat in the above entitled case and rendered a verdict of guilty against this defendant, as to the matters referred to in paragraphs numbered 9 and 10 of the motion for a new trial filed on behalf of this defendant in said case, and in the affidavit filed in support of that motion.

R. GOLDEN DONALDSON,

*Attorney for Defendant Joost H. Schneider.*

To D. W. Baker, Esq., Att'y. for United States:

Please take notice that I shall call up the foregoing motion before Mr. Justice Stafford in Criminal Court, No. 1, on Friday, the 23rd day of October, 1908, at the opening of the Court, or as soon thereafter as counsel can be heard.

R. GOLDEN DONALDSON,

*Attorney for Defendant Joost H. Schneider.*

Service of copy of foregoing motion & notice acknowledged this 20th day of October, 1908.

F. SPRIGG PERRY,  
*Asst. U. S. Attorney, D. C.*

192 Supreme Court of the District of Columbia.

TUESDAY, October 27, A. D. 1908.

The court resumes its session pursuant to adjournment, Mr. Justice Gould, presiding.

\* \* \* \* \*

No. 24141. Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES

vs.

FREDERICK A. HYDE and JOOST H. SCHNEIDER.

By Justice Stafford.

Come as well the Attorney of the United States as the said defendants by their respective attorneys of record; and, thereupon, the motions filed herein by said defendants for a new trial, in arrest of judgment and for authority to examine the jurors who sat in the above numbered case, are argued by counsel for the respective parties and submitted to and taken under consideration by the Court.

Upon motion of the defendants by their said attorneys it is ordered by the Court that the April Term 1908 of this Court be and the same hereby is further extended for the purpose of settling and signing the bill of exceptions to and including the eighteenth (18th) day of November, 1908.

193 *Opinion of Justice Stafford.*

Filed in Open Court Nov. 3, 1908.

In the Supreme Court of the District of Columbia.

No. 24141, Crim. Doc.

UNITED STATES

vs.

FREDERICK A. HYDE et al.

After verdict rendered the convicted defendants, Hyde and Schneider each filed a motion for a new trial substantially in the same language. In said motions the ninth ground alleged was "Because the long confinement of the jury during the trial and after the jury had retired to consider their verdict had the effect



of coercing the jury to agree upon a verdict." So far as this ground is concerned the motions are overruled without comment further than to say that in the opinion of the court there is no reason to believe that the jury was in any degree coerced into its verdict.

As the tenth ground of their motion the defendants alleged the following:

"Because of misconduct of the jury, among other things in this, that their verdict against this defendant was the result of an agreement made in the jury room after the jury had retired to consider their verdict between some of the jurors, whose judgment and opinion on the evidence was that all the defendants should be convicted, and others of the jurors whose judgment and opinion on the evidence was that all the defendants should be acquitted, and which agreement was in substance that if those of the jurors who were in favor

of convicting the defendant Benson would join in a verdict of  
194 acquittal as to him, those who were in favor of acquitting the defendant Hyde would join in a verdict of conviction as to him; and that if those of the jurors whose opinion on the evidence was that all the defendants should be convicted would vote for the acquittal of the defendant Dimond, those who were in favor of acquitting all the defendants would vote for the conviction of the defendant Schneider."

In support of which motion there is filed the affidavit of the attorney of record stating that the grounds set forth in paragraph ten are based upon information, which the affiant believes to be true, obtained by him from two of said jurors, whose names are given in the affidavit; that the attorney has requested one of said two jurors and another juror not of said two, whose name is given, to make affidavit in respect to the allegations made in paragraph ten, and that they have declined to do so upon the advice of their own counsel, stating that they would make no statement unless required to do so by the court.

Each of the convicted defendants also files a motion to be permitted to take in open court the testimony under oath of the jurors, or some of them, as to the matters referred to in paragraphs nine and ten of the motions for a new trial.

Hearing having been had upon said motions and the same having been duly considered, they are now to be disposed of.

The defendants admit that as a general proposition of law the testimony of jurors is not to be received for the purpose of impeaching their verdict, but they contend that to this general rule a broad

and well defined class of exceptions must be recognized, and  
195 has been recognized by various courts, including the Supreme

Court of the United States. In support of their contention they refer particularly to *United States v. Reid*, 12 How. 361, at page 336; *Mattox v. United States*, 146 U. S. 140; *Perry v. Bailey*, 12 Kan. 415; *Gottlieb Bros. v. Jasper & Co.*, 27 Kan. 770; *Wright v. Telegraph Co.*, 20 Iowa 195; *Kruidenier v. Shields*, 70 Iowa 428; and while they refer to several other cases by way of illustration and confirmation, the rule upon which they rely is adequately stated in those above named. That rule is, that jurors may not be

permitted to give evidence tending to impeach their verdict, so far as such evidence may amount to a revelation of the workings of their own minds and consciences in coming to a verdict, but that they may give evidence as to extraneous matters which are known to them just as they might have been known to other persons not members of the jury if such other persons had been present. For example, jurors may not testify that they misunderstood the evidence or the instructions of the court, nor that they were induced to render a verdict by their desire to be released from service, nor that they did not really assent to the verdict which they rendered; because in all these instances they would be testifying to matters which no one but themselves could know. But on the other hand, they may testify to such matters as that their verdict was determined by the cast of a lot, by the turn of a coin, by the result of a game of chance, by any agreement entered into in advance that they would abide by a verdict to be reached in some mechanical way not involving

the exercise of judgment or deliberation, or that they agreed  
196 to accept as their verdict a sum entirely uncertain and unknown to them which should be arrived at by adding together the various amounts set down by the jurors separately and dividing the same by twelve. In none of these instances would they be testifying to their mental processes or with reference to their conscientious convictions upon the merits of the case, but only to such matters as the officer having them in charge, or any bystander or eavesdropper having ears to hear and eyes to see, might testify to just as easily and positively as they. Assuming, for the purposes of these motions, that the rule above stated is correct, what is the result when it is applied to the present case? The ground of the motion is that the verdict was rendered as a result of an agreement among certain of the jurors to acquit two of the defendants and convict the other two. It will not be contended that such an agreement was invalid. Under the instructions of the court which the jury were obliged to follow, it was entirely competent for them to convict the defendants whom they convicted and acquit the defendants whom they acquitted. If the agreement amounted to misconduct it was because it was made contrary to the honest judgment of the jurors. The allegation is that it was a false verdict as to every one of the jurors who became a party to the agreement, for it is alleged that the agreement was entered into "between some of the jurors whose judgment and opinion on the evidence was that all the defendants should be convicted, and others of the jurors whose judgment and opinion on the evidence was that all the defendants should

be acquitted." To attempt to support these motions by the  
197 testimony of a juror who entered into the agreement would be to ask him what was his judgment and opinion on the evidence; and unless he admitted that it was contrary to his verdict his testimony would not support the motions. No juror who did not enter into the agreement could possibly know what the judgment and opinion of the other jurors upon the evidence may have been, and so, if the motion is to be understood as meaning that only a portion of the jury entered into this agreement while as to the remaining portion

the verdict rendered was a true one, those who were not included in it could not testify to the only vital point in the allegation. To allow the jurors to testify in support of the ground alleged, assuming them to be willing to do so, would be to allow them to testify that the verdict which they have solemnly rendered in court was not their honest judgment and opinion on the evidence,—a matter as to which they and they alone could know, and a matter as to which according to the very rule invoked by the defendants a juror is not to be allowed to testify.

Accordingly the motions to be permitted to take the testimony of the jurors are overruled, and

The motions for a new trial are also overruled.

WENDELL P. STAFFORD, *Justice*.

198 Supreme Court of the District of Columbia.

TUESDAY, November 3, A. D. 1908.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford, presiding.

No. 24141. Convicted of Violation of Section 5440, R. S. U. S.

UNITED STATES

vs.

FREDERICK A. HYDE and JOOST H. SCHNEIDER.

Come as well the Attorney of the United States as the defendant Frederick A. Hyde by his Attorney A. S. Worthington, Esquire, and the defendant Joost H. Schneider by his Attorney R. G. Donaldson, Esquire, and, thereupon, it is considered by the Court that the motion filed herein by each of said defendants for a new trial, and heretofore argued by counsel and submitted to the Court, be and the same hereby is overruled; and it is further considered by the Court that the motion filed herein by each of said defendants for leave to examine the jurors who sat in the trial of the above numbered case, and heretofore argued by counsel and submitted to the Court, be and the same hereby is overruled; whereupon, to the overruling of each of said last mentioned motions each of said defendants, by his said attorney, notes an exception.

199 TUESDAY, December 8th, A. D. 1908.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould, presiding.

\* \* \* \* \*

The following action was taken by Justice Stafford:

No. 24141. Convicted of Violating Section 5440, R. S. U. S.

UNITED STATES

vs.

FREDERICK A. HYDE and JOOST H. SCHNEIDER.

Come as well the Attorney of the United States as the defendants, Frederick A. Hyde and Joost H. Schneider, in proper person, ac-

cording to their respective recognizances and by their Attorneys A. S. Worthington and R. Golden Donaldson, Esquires; and, thereupon, it is considered by the Court that the motions in arrest of judgment filed herein by said defendants be and the same hereby are overruled; whereupon at the request of each of said defendants the Court notes an exception to the action of the Court overruling said motions in arrest of judgment to each count of the indictment herein and to the whole thereof; and, thereupon, it is demanded of the defendant Frederick A. Hyde what further he has to say why the sentence of the law should not be pronounced against him upon all the counts of the said indictment on which the jury returned a verdict finding him guilty, and he says nothing except as he has already said; whereupon it is considered by the Court that  
200 for his said offense the said defendant Frederick A. Hyde be taken by the Warden of the United States Jail in and for the District of Columbia to said jail, thence to the Penitentiary (as designated by the Attorney General of the United States) there to be imprisoned for the period of Two (2) years to take effect from and including the date of his, the said defendant Frederick A. Hyde's, arrival at the said Penitentiary, and further that he, the said defendant Frederick A. Hyde, pay a fine of Ten Thousand (\$10,000) Dollars or, in default thereof, to stand further committed until paid.

Whereupon it is demanded of the defendant Joost H. Schneider what further he has to say why the sentence of the law should not be pronounced against him upon all the counts of the said indictment on which the jury returned a verdict finding him guilty, and he says nothing, except as he has already said; whereupon it is considered by the Court that for his said offense the said defendant Joost H. Schneider be taken by the Warden of the United States Jail in and for the District of Columbia to said jail, thence to the Penitentiary (as designated by the Attorney General of the United States) there to be imprisoned for the period of One (1) year and two (2) months to take effect from and including the date of his, the said defendant Joost H. Schneider's, arrival at the said Penitentiary, and further that he, the said defendant Joost H. Schneider, pay a fine of One Thousand (1,000) Dollars or, in default thereof, to stand further committed until paid.

Thereupon each of the said defendants by his said attorney  
201 notes an appeal to the Court of Appeals of the District of Columbia from the judgment herein, and, thereupon, on motion of said defendants the penalty of the bond for costs on each appeal is fixed in the sum of One Hundred (100) Dollars; whereupon the Attorney of the United States in open Court waives the issuance of a writ of citation; and, thereupon, the said defendant Frederick A. Hyde by his attorney moves the Court to fix the amount of the bail for the appearance of said defendant pending his said appeal, which motion is granted and said bail is fixed in the sum of Twenty Thousand (20,000) Dollars; and, thereupon, the said defendant Joost H. Schneider by his attorney moves the Court to fix the amount of the bail for the appearance of said de-

fendant, Joost H. Schneider, pending his said appeal, which motion is granted and said bail is fixed in the sum of Ten Thousand (10,000) Dollars; whereupon the said defendant, Frederick A. Hyde, enters into a recognizance in the sum of Twenty Thousand (20,000) Dollars with the United Surety Company as his surety approved by the Court if said defendant, Frederick A. Hyde, fail to forthwith surrender himself to the custody of the Marshal of this District to be dealt with and proceeded against according to law in case the judgment appealed from shall be affirmed, or the appeal for any cause dismissed, or the judgment be reversed and a new trial ordered, or if the said defendant depart the Court without leave. And, thereupon, the said defendant, Joost H. Schneider, enters into a recognizance in the sum of Ten Thousand (10,000) Dollars with the United Surety Company as his surety approved by the

202 Court if said defendant fail to forthwith surrender himself to the custody of the Marshal of this District to be dealt with and proceeded against according to law in case the judgment appealed from shall be affirmed, or the appeal for any cause dismissed, or the judgment be reversed and a new trial ordered, or if the said defendant depart the Court without leave.

*Bond for Appeal to Court of Appeals.*

Filed December 22, 1908.

In the Supreme Court of the District of Columbia.

No. 24141. Criminal.

UNITED STATES OF AMERICA

VS.

FREDERICK A. HYDE, JOOST H. SCHNEIDER.

Know all men by these presents, That we, Frederick A. Hyde, as principal, and United Surety Company, as surety, are held and firmly bound unto the above named United States of America in the full sum of One Hundred dollars to be paid to the said United States of America, successors, or assigns. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, administrators, successors, and assigns, firmly by these presents. Sealed with our seals, and dated this 8th day of December, in the year of our

203 Lord one thousand nine hundred and eight.

Whereas the above-named Frederick A. Hyde has prosecuted an appeal to the Court of Appeals of the District of Columbia, to reverse the Judgment rendered in the above suit by the said Supreme Court of the District of Columbia:

Now, therefore, the condition of this obligation is such, That if the above-named Frederick A. Hyde shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea,

then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

Signed, sealed and delivered in the presence of:

FREDERICK A. HYDE, [SEAL.]  
 UNITED SURETY COMPANY, [SEAL.]  
 By EDWARD B. EYNON, JR., *Agent*.

Approved the 22d day of December, 1908.

WENDELL P. STAFFORD,  
*Justice, S. C. D. C.*

*Bond for Appeal to Court of Appeals*

Filed December 22, 1908.

In the Supreme Court of the District of Columbia.

No. 24141. Criminal.

UNITED STATES OF AMERICA

vs.

FREDERICK A. HYDE, JOOST H. SCHNEIDER.

Know all men by these presents, That we, Joost H. Schneider, as principal, and United Surety Company, as surety, are held and firmly bound unto the above named United States of America in the full sum of One Hundred dollars, to be paid to the said United States of America, successors, or assigns. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, administrators, successors, and assigns, firmly by these presents. Sealed with our seals, and dated this 8th day of December, in the year of our Lord one thousand nine hundred and eight.

Whereas the above-named Joost H. Schneider has prosecuted an appeal to the Court of Appeals of the District of Columbia, to reverse the Judgment rendered in the above suit by the said Supreme Court of the District of Columbia:

Now, therefore, the condition of this obligation is such, That if the above-named Joost H. Schneider shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

Sealed and delivered in presence of—

JOOST H. SCHNEIDER, [SEAL.]  
 UNITED SURETY COMPANY, [SEAL.]  
 By EDWARD B. EYNON, JR., *Agent*.

Approved the 22d day of December, 1908.

WENDELL P. STAFFORD,  
*Justice, S. C. D. C.*

*Memoranda.*

Time for submitting bill of exceptions duly extended from time to time to, and including, November 1st, 1909.

Time for filing transcript in Court of Appeals duly extended from time to time to, and including, December 1st, 1909.

Supreme Court of the District of Columbia.

THURSDAY, November 4th, A. D. 1909.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

\* \* \* \* \*

No. 24141.

UNITED STATES

VS.

FREDERICK A. HYDE and JOOST H. SCHNEIDER.

Now come here the defendants by their attorneys A. S. Worthington and R. Golden Donaldson, Esquires, and pray the Court to sign and make a part of the record their bill of exceptions taken during the trial of this case and submitted to the Court on the 13th day of April, 1909, which is accordingly done, nunc pro tunc.

*Bill of Exceptions.*

Filed November 4, 1909.

In the Supreme Court of the District of Columbia.

No. 24141. Criminal Docket.

UNITED STATES

VS.

FREDERICK A. HYDE and JOOST H. SCHNEIDER.

In the trial of this case the Government was represented by Mr. Daniel W. Baker, United States District Attorney, and Arthur B. Pugh, Esq., Special Assistant to the Attorney General. Mr. Thomas B. Neuhausen, who held the position of Special Inspector in the Interior Department, and who is referred to in the following bill of exceptions as also present in court during the taking of part of the evidence in chief on behalf of the Government, and assisting the other representatives of the Government in the presentation of the evidence on behalf of the Government.

The defendant Frederick A. Hyde was represented by Mr. A. S. Worthington and Mr. R. Golden Donaldson; the defendant John

A. Benson by Mr. Joseph C. Campbell and Mr. A. A. Birney; the defendant Joost H. Schneider by Mr. R. Golden Donaldson; and the defendant Henry P. Dimond by Mr. Vander Veer.

Immediately upon the organization of the jury for the trial of the above entitled case, and before the opening statements of counsel for the Government, and before any evidence in the case was offered, the presiding Justice made the order which is a part of the record in this case which, among other things, provided for keeping the jury together in the custody of the Marshal of the United States for the District of Columbia, or his deputies, during the trial. To the making of so much of said order as related to the confinement and custody of the jury during the trial, the defendants, and each of them, objected, upon the grounds:

"First, that by the long continued usage and practice in the Courts of this District, an order of that kind can only be made in a capital case, and that by the common law of the District, so to speak, the Court has no power to do it in a case of this kind."

"In the second place, because the making of such an order must impress the minds of the jury, or some of them, with the fact that the Court is of opinion that there is danger of some of the defendants seeking to corrupt them."

"And, third, because the keeping of the jury together in the way proposed, for such a length of time as this trial will probably occupy, is likely to result, on account of illness or other cause, in a mistrial, to the great prejudice and injury of the defendants."

But the Court overruled the objections, and made the order; to which action of the Court the defendants and each of them, duly excepted.

208 The following is a statement of the substance of all the evidence submitted to the jury at the trial, in so far as the same has any bearing upon any of the questions of law raised by the record in this case or by this bill of exceptions.

#### WITNESSES FOR THE UNITED STATES.

*Henry P. Berthrong.*

By Mr. PUGH:

I am a topographical draftsman in the General Land Office, and have been Chief of the drafting division of that office since March 28th, 1907; the business of that office is compiling and drawing maps, plats, and diagrams for publication or for use in court, or for use in the Land Office; that division does all of the work of that character in connection with the operation of the land department; I identify the first map that hangs on the wall as a map of the State of Oregon which shows the Cascade Range Forest Reservation in that state, in green. The President's proclamations creating that forest reservation were on Sept. 28 1893, and made on the first day of July, 1901; the part of that reserve that came under the first proclamation, and the part that came under the second proclamation are not shown here; the green represents the original proclamation



of September 28, 1893, (28 Stat. 1240) and the red the addition of July 1st, 1901; there was a small tract of that reservation restored April 29th, 1898—just half a township; that is the only change from 1893 down to 1902.

The other map on the wall represents the forest reserves 209 in central and southern California. The San Gabriel forest reserve on that map is olive green; the proclamation of that forest reserve is dated December 20, 1892, and the coloring of that reservation is in accordance with the boundaries given in that proclamation. (27 Stat. 1018.)

On this map the Sierra Forest Reserve is colored light green; that forest reserve was established February 14, 1893; the boundaries of that reservation, as indicated on the map were taken from the boundaries given in the proclamation. (27 Stat. 1059.)

The San Bernardino Forest Reservation on that map is colored carmine; that reservation was established by proclamation dated February 25, 1893. (27 Stat. 1068.)

The Trabucia Canyon Forest Reservation on that map is colored carmine, and there is an addition in dark green; the original proclamation of that reserve was dated February 25, 1893 (27 Stat. 1066); and the addition was proclaimed January 30, 1899.

The San Jacinto Forest Reserve on that map is colored brown. It was established by proclamation February 22nd 1897 (29 Stat. 893); there was an elimination from the reserve on October 17, 1901, and the elimination is marked with a heavy black line.

The Stanislaus Forest Reservation on that map is dark green. It was established by proclamation February 22nd, 1897 (29 Stat. 898). There were additions to that reservation afterwards, or eliminations from it.

(Counsel for the Government here stated that the additions 210 or eliminations last referred to by the witness were made after the finding of the indictment in this case.)

(Witness resuming:)

The Pine Mountain and Zaca Lake Reservation on that map is marked green; it was established by proclamation of March 2, 1898, (30 Stat. 1757.) There were two additions made to that reservation prior to 1901; and they are indicated in red; they were made by proclamation of June 29, 1898.

The Lake Tahoe Forest Reservation on this map is indicated by dark blue; it was established by proclamation of April 13, 1899 (30 Stats. 1753.)

The Santa Ynez Forest Reservation on this map is in carmine; it was created by proclamation of October 2, 1899. It lies to the south of the Pine Mountain and Zaca Lake Forest Reserve.

There was an elimination from the Cascade Range Forest Reserve on April 29, 1898; it was at the northern end of the reservation; there was another elimination from that reserve on April 6th, 1899. It is in the northwestern part of it—a very small tract. There was another elimination from that reservation on June 29, 1901. That is in the southeastern portion.

At this point, counsel for the Government read to the jury the following portion of the Act of Congress of June 4, 1897:

(30. Stat., p. 36.)

211 "That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent; and no charge shall be made in such cases for making the entry of record or issuing the patent to cover the tract selected; Provided further, That in cases of unperfected claims the requirements of the laws respecting settlement, residence, improvements, and so forth, are complied with on the new claims, credit being allowed for the time spent on the relinquished claims."

Counsel for the Government next read to the jury section — of the Act of March 3, 1853 (10th Stats., 243), making a grant to the State of California of school lands which section is as follows:

"Sec. 6. And be it further enacted, That all the public lands in the state of California, whether surveyed or unsurveyed, with the exception of sections sixteen and thirty-six, which shall be and hereby are granted to the state for the purposes of public schools in each township, and with the exception of lands appropriated under the authority of this act, or reserved by competent authority, and excepting also the lands claimed under any foreign grant or title and the mineral lands, shall be subject to the preemption laws of the fourth of September, eighteen hundred and forty-one."

212 Also section four of the Act of Congress of February 14, 1859, (11 Stats., 388), making a grant of school lands for the state of Oregon, as follows:

"First. That section sixteen and thirty-six in every township of public lands in said state, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said state for the use of schools."

Thereupon counsel for the Government read in evidence to the jury the following sections from the Political Code of California:

"Sec. 3494. School lands; price; payment, when to be made. The unsold portion of the five hundred thousand acres granted to the state for school purposes, the sixteenth and thirty sixth sections, and lands selected in lieu thereof, must be sold at the rate of one dollar and twenty five cents (\$1.25) per acre, in gold coin, payable twenty per cent of the principal within fifty days from the date of the certificate of location issued to the purchaser; the balance bearing interest at the rate of seven per cent per annum, in advance, is due and payable within one year after the passage of any act of the legislature requiring such payment, or before, if desired by the purchaser."

"Sec. 3495. Affidavit on application to purchase. Any person desiring to purchase any portion not less than the smallest legal sub-

division of any of the lands mentioned in section thirty four  
 213 hundred and ninety four, situated in any township which  
 has been surveyed by the United States, must make an affidavit that he is a citizen of the United States, or has filed his intention to become such, a resident of this state of lawful age, that he desires to purchase such lands (describing the same by legal subdivisions) under the provisions of this title; that there is no occupation of such lands adverse to any that he has, or if there is an adverse occupation the affidavit must show that the township has been sectionized three months and that the adverse occupant (giving his name) has been in such occupation more than sixty days since the plat was filed in the United States land office; that he desires to purchase the same for his own use and benefit, and for the use or benefit of no other person or persons whomsoever, and that he has made no contract or agreement to sell the same. The affidavit must also state whether the land is or is not suitable for cultivation, and if it is, that the applicant is an actual settler thereon, and that he has not entered any portion of any lands mentioned in section thirty four hundred and ninety four, which, together with that now sought to be purchased, exceeds three hundred and twenty acres; but if the land is not suitable for cultivation the affidavit must further state that the applicant has not entered any portion of such lands, which, together with that now sought to be entered, exceeds six hundred and forty acres. Lands unsuitable for cultivation may be  
 sold in quantities not exceeding six hundred and forty acres  
 214 to any one person, under the restriction other than as to actual settlement prescribed for the sale of cultivable lands.

The surveyor general and register of the land office must make and enforce all necessary rules and regulations to prevent the sale of school lands suitable for cultivation to any person not an actual settler thereon; provided, that any smallest legal subdivision of school lands shall be deemed suitable for cultivation if any part not less than one half of its area will, without artificial irrigation, but with or without the clearing of timber or other growth therefrom, by the ordinary processes of tillage, produce ordinary agricultural crops in average quantity; and provided, that any contest of the applicant's right to purchase, arising from the character of the land as cultivable or otherwise, may be referred to the superior court of the proper county, as in other cases, for determination; and provided further, that no contest of the applicant's right to purchase arising from adverse occupation, shall be maintained, except by a prior adverse occupant, who shall have filed an application to purchase the land under the provisions of this section, and no occupation of land by a person other than the applicant shall be an adverse occupation within the meaning of this section, unless such occupation is by a person who is entitled to purchase the same under the provisions hereof, and who files his application therefor within the time prescribed by section thirty four hundred and ninety seven of this code."

215 "Sec. 3500. Applications for other than 16th and 36th sections. Any false statement contained in the affidavit pro-

vided for in section three thousand four hundred and ninety five, defeats the right of the applicant to purchase the land or to receive any evidence of title thereto, and, if wilfully false, subjects him also to punishment for perjury. Timber lands belonging to this state shall be sold for cash only, and the surveyor-general and register of the state land office must make and enforce all necessary rules and regulations to prevent the sale or issuance of any evidence of title to any timber lands of this state, except on payment in cash, of the full price fixed therefor by law."

Counsel for the Government then read in evidence to the jury the following sections from Hill's "Annotated Laws of Oregon" of 1887, as follows:

"SEC. 3617. The governor, secretary of state, and state treasurer, as a board of commissioners for the sale of school and university lands, and for the investment of the funds arising therefrom, are hereby authorized and required to sell the remaining unsold school, University and capitol building lands; also lands granted to the state by the United States adjoining salt springs, and lands granted to the state for the purposes of internal improvements, which have been or may hereafter be selected, at the uniform price of one dollar and twenty five cents per acre, and the agricultural college lands  
216 at two dollars and fifty cents per acre, in quantities not exceeding three hundred and twenty acres to any one person."

"SEC. 3618. When any person desires to purchase any of the lands of this state mentioned in section 3617, he shall file an application therefor with the said board of commissioner(s), which application shall contain a precise descriptions of the land applied for, according to the United States survey thereof, and be accompanied by the affidavit of the applicant, taken before some notary public or county clerk, to the effect that he is over eighteen years of age, and is a citizen of the United States, or has declared his intention to become such and a resident of this state, that he has not directly or indirectly made any previous purchase of land from this state, or any for him, which together with the land described in the application exceeds three hundred and twenty acres; that the proposed purchase is for his own benefit, and not for the purpose of speculation; that he has made no contract or agreement, express or implied, for the sale or disposition of the land applied for in case he is permitted to purchase the same, and that there is no valid adverse claim thereto by any actual settler."

"SEC. 3601. The board shall make such rules and regulations for ascertaining the value of lands as they may deem most conducive to that end; and upon satisfactory proof of the value of any lands for which application has been made, they may sell the same to such applicant at such valuation, under the restrictions hereinbefore  
217 contained in this act. The applicant, upon paying the commissioners one half of the purchase price in the case of timbered lands, and executing his promissory note to such board for the other half, due in one year, bearing interest at the rate of ten per cent per annum, and in all other cases, except tide and swamp lands, upon paying the board one third of the purchase price, and

executing his promissory note for the remaining two thirds, bearing interest at ten per cent per annum, payable annually, one of such notes payable in one year, and the other payable in two years, from the date of such purchase, shall be entitled to receive from the board a certificate that he has purchased the land therein described, has paid a certain sum thereon, and executed his promissory note for a certain other sum or other sums, and on payment of such notes, principal and interest will be entitled to a deed therefor."

"Section 3605 provides:

"All assignments of certificates of sale shall be executed and acknowledged in the same manner as a deed to real estate; and the assignee, upon full payment of the amount due on the purchase price, and delivery to the board such certificates and assignment, shall receive a deed for the lands described in such certificate in his own name, *and if he were the original purchaser.*"

The witness, referring to the third map hanging on the wall of the courtroom, said:

I have represented on this map of northern California  
218 the temporary withdrawals for forest reserve purposes; they were made October 14, 1902; the Klamath River proposed forest reservation on this map is in carmine, and is located in the northwestern portion of California. The Mount Shasta proposed reservation on this map is in blue, and is in the northern part of California, east of and adjoining the Klamath River reservation. The Lassen Peak proposed forest reservation is shown in brown, and is northwest of the Diamond Mountain. The Diamond Mountain Reservation on this map is shown in purple on the east of the Lassen Peak withdrawal. The Klamath River reservation was withdrawn October 14th, 1902; the Mt. Shasta was withdrawn October 17, 1902; the Lassen Peak was withdrawn October 22, 1902. The Stony Creek Forest Reservation on this map is in purple; it was withdrawn October 14, 1902, and is in the northwestern part of California, southwest of Lassen Peak. The Feather River Forest Reserve on this map is in carmine, and extends all the way down the eastern part of the Sierra Reserve. It was withdrawn December 24, 1902; it starts from the northern part of California and extends about three quarters of the way down the state, along the western portion of the Sierra Reserve. This last-named reservation on the map is separated from the Klamath River reservation by heavier lines—blue and brown and purple.

The map, hereinbefore referred to, of the Cascade Forest Reserve in Oregon was marked Exhibit No. 10; the above mentioned map of forest reserves in California was marked Exhibit No. 11, and the last-mentioned map of temporary withdrawals of forest reserves  
219 in California was marked Exhibit No. 12

I have been chief of the Drafting Division of the General Land office since March 28, 1907. That division is also known as the "Map Division." Frank Bond was my predecessor as chief of said division, and Harry King was his predecessor. I was a clerk and draftsman in the division in December, 1902, and January, 1903. There was a change in the personnel of the division January

6, 1903, and Mr. King, the chief, and Mr. Metzgar, the assistant chief, were discharged. It was common knowledge that they were discharged because they had been making maps for somebody outside the office.

*John H. Fimple.*

By Mr. PUGH:

I live in Carrollton, Ohio, and am forty-nine years of age; I have lived in Carrollton since 1884 or 1885; I am an attorney; in April, 1889 I was appointed principal examiner in the General Land Office; the year after I was made law clerk for the General Land Office and served in that capacity until about May, 1893. Then I was out of the service until June 1900, when I was appointed assistant attorney in the office of the Assistant Attorney General for the Interior Department under Judge Vandevanter. I served in that capacity from June, 1900 until about the first of February, 1902. I was then out of the service until February 1903, when I was appointed Assistant Commissioner, of the General Land Office, 220 and served in that capacity until the middle of May, 1906.

When I was Assistant Commissioner, in the absence of the Commissioner, I was charged with the duties of the head of the Bureau. I have general knowledge of the duties with which the various employes and officers of the Land Office were charged, including the chiefs of the divisions, the forest reserve officers, and special agents of the general Land Office. There were no statutes prescribing the duties of chiefs of divisions, special agents and forest officers.

From 1889 until 1893 the organization of the General Land Office was substantially what it is now. The office was divided into eleven divisions. Up until 1890 there was provision under the appropriation acts for eight chiefs of division, and at that time there were also three principal clerks, who, with the eight chiefs of division, constituted the chiefs of divisions. The Recorder, whose duties are defined by statute, also acted as chief of division B—that is, the patenting division. There was a division known as the special service division of the office, called Division P. The chief of that division had the supervision of the entire force of special agents, and always has had, and has yet. The chief of Division P is charged with the duty, primarily, of protecting the public lands from illegal and fraudulent entry, and from timber trespass and he issues instructions to the special agents and receives and examines their reports. He institutes or initiates proceedings looking to the cancellation of illegal or 221 fraudulent entries, orders hearings and considers the testimony and the record on the trials had in the local land offices throughout the country. The chief of Division P was also charged with the further duty of preparing cases for reference to the Department of Justice, for recommending suits to cancel patents, for damages to recover for timber trespass or illegal fencing, or for criminal prosecution.

On February 28, 1901, Division R was organized, which had charge of the administration of the forest reserves. Until Division

R was formed, Division P had charge of the administration of the forest reserves. In that capacity, the chief of that division issued the instructions to forest officers, superintendents, and supervisors, and received and examined their reports, and made recommendations as to the withdrawal of lands, the creation of permanent reserves; issued instructions to officers making examinations in new and additional territory to be included within reserves; prepared the proclamations for transmission to the Department, recommending the creation of forest reserves.

In 1900, W. D. Harlan was the Chief of Division P, and he continued to be chief of that division until after I came in as assistant commissioner of the General Land Office. He was transferred to Division H—the contesting division—the first of April, 1903.

Until Division R was formed, Division P had charge of the forest reserves, and after the passage of the Act of June 4, 1897, it had charge of the making of lieu selections under that act.

William E. Valk was assigned to the lieu selection division 222 of Division P. He remained in that division until the forestry division (R) was created, February 28, 1901, when he, with sixteen others, was transferred to that new division, and thereafter all the forest reserve work was done under the direction and supervision of Division R. In Division R, Mr. Valk remained in charge of that work until September 15, 1902, when he was transferred to the contest division, and Mr. John McPhaul was placed in charge of the lieu selection work. When the new division was created, Mr. Valk assumed greater or more complete control of the lieu selection work than he had before. He supervised, in a way, the other clerks engaged in that work; but he never was made chief of Division R.

The procedure, in acting upon forest lieu selections in the General Land Office, was as follows:

The owner of land in a forest reserve desiring to exchange it under the Act of June 4, 1897, would make an application for a specific tract of land in the district where he desired to select lands. He would accompany that application with a deed of relinquishment of the land which he desired to exchange. He generally called that the base land; and that deed of relinquishment was part of the evidence of record in the district where the lands were situated, accompanied by an abstract of title of the lands relinquished. He also accompanied his application by an affidavit of non-occupancy, showing that the selected land was vacant and open to settlement; and also a non-mineral affidavit, and a non-saline affidavit. When this application was made in the local offices, they noted it upon their records, and 223 if the land applied for was free from conflict, they so certified it. They then forwarded the papers to the general Land Office, and, until Division R was formed, they would go to Division P, and after that to Division R. There the case would be jacketed, and a description would be entered on the docket of the land relinquished, and also of the land selected. Then the case was referred to Division C for notation upon the tract books. Then it would come back to the Division, and be put on the files to await consideration.

When the case was reached for consideration, it was given out to a clerk by Mr. McPhaul, or Mr. Valk, whichever was in charge, and if no objection was found to the confirmation or approval of the selection, it would be approved by a letter addressed to the local land office in the district in which the selected land was situated; and also by a letter addressed to the local land office of the district where the base land was situated. This procedure was followed when school land in sections 16 or 36 in a forest reservation were relinquished to the United States, except that, in all cases where the land applied for was within six miles of a mining claim or any mineral township, they were required to publish notice of the selection. The papers that came to the general land office in these cases were the application to select the land, the affidavit of non-occupancy, the non-mineral affidavit, the non-saline affidavit, and the abstract of title to the lands relinquished in sections 16 or 36, and the deed of relinquishment to the United States of the base land, and the evidence of the record of that deed.

224 The local officers would note the selection on their records and certify the fact as to whether the land applied for was free from conflict with any other claimant under the public land laws and would then forward the papers to the General Land Office at Washington, D. C. They had no power to allow them or to pass upon them; they had nothing whatever to do except to send them here. "The local office merely receives those applications and forwards them to the General Land Office."

These lieu selection cases were numbered serially as they came in. They were given a docket number, and a selection number—the docket number being the selection number; and under the practice which always obtained when I was in the Land Office, and when I was in the Department, they should be taken up in their regular order unless they were made special by specific order of the Commissioner. Of course, frequently some defect existed in the papers, which would necessitate a letter being written to the local office in which the selection was made, requiring the defect to be cured. That necessarily, of course, tied up that case until the requirement was complied with; but the cases otherwise would be taken up and considered in their regular order—in the order of their numbers.

Counsel for the Government then offered in evidence the following orders of the Land Office, dated, respectively, April 30, 1901; July 13, 1893; August 19, 1897; February 2, 1898; February 5, 1901:



225

## "EXHIBIT 13.

"A

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE.  
WASHINGTON, D. C., April 30, 1901.

Copy.

Address only the Commissioner of the General Land Office.

*Order.*

CHIEFS OF DIVISION: "The instructions contained in the accompanying circular, dated July 13, 1893, relative to conversations respecting official business between attorneys or agents and employees in matters pending before this office does not appear to be fully complied with. Chiefs of Division will see that the requirements are strictly enforced and will be held accountable therefor

G. N. WHITTINGTON.

*Chief Clerk.*

"DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE.  
WASHINGTON, D. C., July 13, 1893.

A

To the Chiefs of Divisions, Examiners, Reviewers of Decisions, and Clerks of the General Land Office.

GENTLEMEN: By letter of June 2, 1891, the Commissioner promulgated the following:

226 Office Order of March 12, 1891, reads as follows:

Attention is called to Rule 75 of the Rules of Practice which reads as follows, viz:

If, before decision by the Commissioner, either party should desire to discuss a case orally, a reasonable opportunity therefor will be given, in the discretion of the Commissioner, but only at a time to be fixed by him, upon notice to the opposing counsel, stating time and specific points upon which discussion is desired; and, except as herein provided, no oral hearings or suggestions will be allowed.

It will be seen from the foregoing rule that except as provided for therein, under special authorization in the discretion of the Commissioner 'no oral hearings or suggestions will be allowed. The prohibition of 'oral hearings or suggestions,' with the exception indicated, is regarded as a general one, to be observed by all persons concerned. The spirit of the rule above quoted if not its letter, extends so as to embrace the case of attorneys or agents in their intercourse with the clerks and examiners in this office, having in charge any matters pending for decision, and prohibits them from having oral hearings or making suggestions with reference to the matters so pending, without the order of the Commissioner, and without notice to other parties who may be interested. It operates as a prohibition of their discussing cases with any of the clerks or ex-

aminers or reviewers of decisions, except as may be specially directed by the Commissioner, in the exercise of his discretion.

It is hereby enjoined upon all clerks, examiners, and reviewers of decisions to use great circumspection in this respect and to  
227 avoid entering upon conversation and discussions, with regard to pending matters, partaking of the nature of hearings, suggestions, or arguments, and tending, if not tended, to influence the decision thereof, without the order of the Commissioner to that effect.

Chiefs of divisions are specially enjoined to enforce this order on the clerks employed under their direction, and it is hoped that attorneys practicing before this office will see the propriety of proceeding in perfect harmony therewith.

LEWIS A. GROFF,  
*Commissioner.*

"I desire to call special attention to the foregoing, and as it appears to have failed of attaining the full effect intended—

"It is hereby ordered, "That hereafter no conversation respecting official business shall be entered into with any attorneys or agents in matters pending before this office, by any of the clerks, examiners, or reviewers of decisions in this office, except chiefs of divisions, unless under special permission of the Commissioner or Assistant Commissioner; and a violation of this order will be sufficient cause for dismissal.

S. W. LAMOREAUX,  
*Commissioner.*

228

"DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., August 19, 1897.

Copy.

Address only the Commissioner of the General Land Office.

The attention of Chiefs of Divisions is called to the following order of November 5, 1889.

E. F. BEST,  
*Acting Commissioner.*

*Practice.*

Making Cases Special.

"As a rule, cases pending in this office will not be made special by taking them up and acting on them out of their proper order, to the delaying of others in order and having superior claims to attention. Cases will be acted upon in regular order, except when the contrary course is required by a proper regard for the public

interest, or is deemed necessary to avoid extreme hardship in individual cases and is specifically ordered by the Commissioner.

It is to be understood, however, that when an applicant comes forward at any time to perfect title to public land, according to law, with a tender of any necessary proof, and the proper consideration for the land, or in other respects does all that can be required of him or offers to do so, but is prevented from consummating his entry or right to a patent, at that time, by some question affecting his right, which takes considerable time in its investigation and consideration, but which is finally decided in his favor, and he permitted after the expiration of such time, to perfect formal entry, the entry so finally allowed, should on proper applications, be taken up and acted upon, as if made at the time of the original application, when his equitable right to a patent accrued, and not to await its turn as of the date of the actual entry.

“DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

WASHINGTON, D. C., *February 2, 1898.*

Address only the Commissioner of the General Land Office.

*Order.*

No clerk or other employé of the General Land Office shall except in the performance of his official duties make, sell or furnish any abstract, copy, tracing or other reproduction of any of the books, papers, maps, plats, diagrams, or drawings which constitute the records of said office.

BINGER HERMANN,

*Commissioner.*”

230

*“Circular.*

Employés of the General Land Office Becoming Interested in Public Lands.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

WASHINGTON, D. C., *February 5, 1901.*

To all Officers, Clerks, and employés of the United States who are in any way connected with enforcement of either the public Land or Forestry Laws:

Your attention is called to Section 452, U. S. Revised Statutes, which reads as follows:

“The officers, clerks and employés in the General Land Office are prohibited from, directly or indirectly purchasing or becoming interested in the purchase of any of the public land; and any person who violates this section shall forthwith be removed from his office.”

In construing this Statute the Department has held—L. D. Vol. X, p. 97—that its provisions

Extend to officers, clerks and employés in any of the branches of the public service under the control and supervision of the Commissioner of the General Land Office in the discharge of his duties relating to the survey and sale of the public lands.

Acting under the spirit of this law and the decisions referred to, this office will hereafter recommend the removal and dismissal of any of the above-named officers, clerks, or employés who shall in the future, either for themselves or for others, in any manner negotiate for, buy, sell, or locate any warrant, scrip, lieu land selection, soldier's additional right, or any other negotiable right or claim under which an interest in public lands may be asserted, as well as all such officers, clerks or employés who shall, except in the discharge of an official duty, help or in any manner whatever, aid or assist in any such negotiations, purchases, sales or locations as may be made by others for speculative purposes, or who shall in any manner whatever, except in the discharge of an official duty, furnish any information whatsoever, or in any manner be in communication with, any person, firm or corporation dealing in any such rights, in relation to such rights.

All of such officers who shall be in charge of and maintain offices are hereby directed to bring this circular to the attention of their subordinates, and to hereafter keep the same conspicuously posted in their respective offices.

BINGER HERMANN,

*Commissioner.*

Counsel for the Government also offered in evidence rule 108 of the Rules of Practice established by the land Office and in force during the years

“Rule 108. In the examination of any case, whether contested or exparte, the attorneys employed in said case, when in good standing in the Department, for the preparation of arguments, will be allowed full opportunity to consult the records of the case, the abstracts, field notes, and tract books, and the correspondence of the General Land Office or of the Department not deemed privileged and confidential; and whenever, in the judgment of the Commissioner, it would not jeopardize any public or official interest, may make verbal inquiries of chiefs of divisions at their respective desks in respect to the papers or status of said case; but such inquiries will not be made to said chiefs or other clerks of division except upon consent of the Commissioner, Assistant Commissioner, or chief clerk, and will be restricted to hours between 11 a. m. and 2 p. m.”

Also two orders of the Commissioner of the General Land Office relating to the creation of Division R, both dated February 28th, 1901, which are as follows:

"DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., *February 28, 1901.*

Address only the Commissioner of the General Land Office.

*Order.*

A Division of this Office is hereby constituted to have charge of all matters pertaining to the Forestry Service, the same will be known as Division "R," and Mr. A. R. Greene, being duly appointed, 233 will be the Chief thereof, and be respected accordingly.

BINGER HERMANN,  
*Commissioner.*

"A"

"DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., *February 28, 1901.*

Address only the Commissioner of the General Land Office.

Chief of Division "P," General Land Office.

SIR: The Division of Forestry in this Office, to be known as Division "R," being duly constituted, with Mr. A. R. Greene as Chief, you are hereby directed to turn over to said Division all books, records, documents, and matters of any kind now in your charge, pertaining to the entire business relating to Forestry; and such clerks as have heretofore been engaged upon the work referred to are hereby transferred to the New Division, and will be subject to the direction of the Chief thereof.

Very respectfully,

BINGER HERMANN,  
*Commissioner.*

Rit.  
P-W. D. Harlan.  
R-A. R. Greene."

234 Counsel for the Government also offered in evidence the following order, dated September 15, 1902:

"A"

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., *September 15, 1902.*

Address only the Commissioner of the General Land Office.

*Order.*

John McPhaul is hereby transferred to the Forestry Division (R) and will report to the Chief, R. Roth for duty, at once.

Mr. McPhaul will assume entire control of the forest lieu selections in said Division and will have charge of all clerks in Division R, who are engaged upon forest lieu selection work. He will initial all decisions and letters pertaining to said work and it will not be

necessary for the Chief or Assistant Chief of the Division to initial the same. It will not be necessary for decisions and letters approved by Mr. McPhaul to be submitted to the Law Examiners unless Mr. McPhaul shall desire their opinion.

W. A. RICHARDS,  
*Acting Commissioner.*

Approved:

E. A. HITCHCOCK,  
*Secretary.*

235 (Witness resuming:)

While I was Assistant Commissioner of the General Land Office, from 1903 to 1904, reports of the Special Agents to the Special Service Division were treated in the office as privileged and confidential, until acted upon by the Commissioner. This continued to be the rule when I was an assisting attorney in the office of the Assistant Attorney General; any report of any officer of the Government who is required to report upon any matter of official business in which the business of the General Land Office was involved, was always treated as privileged and confidential until acted upon by the Bureau; the same practice obtained as to the reports of Forest Reserve Officers who examined the land with a view of creating forest reserves.

Cross-examination.

In reference to forest lieu selection cases, as stated before, the practice was that all cases should be considered in their regular order, unless made special by order of the Commissioner. Witness was then asked:

"Q. There was no time between June 4, 1897, the date of the passage of the act, and 1903, any change in that regard? A. There was not, except I understand that there was an order made while Mr. Hermann was Commissioner, which was designated as the perfected or completed case order. That is, he issued an order or a direction to the effect that cases which were perfected and  
236 completed might be taken up and considered in advance of those in which some defect existed; but that order had been abrogated in practice before I assumed my duties as assistant commissioner," which was in 1903. My recollection is that the order was made some time in 1902, but I would not be definite as to that; I am inclined to think it was a verbal order.

An order of the Commissioner was binding upon the clerks of the division, whether verbal or written.

As to making public what was going on in reference to forest reserves before they were finally determined upon, the custom was, so far as concerned the special agents or the forest officer whose duty it was to investigate territory and examine it with a view to including it in a forest reserve, that he should acquire all the information possible, and make a preliminary examination of the territory and report that to the Commissioner; he was to confer with people in the neighborhood of the reserve, but his conclusions

and report upon that information was to be made to the Commissioner, and treated as being privileged and confidential, at all times.

It was not the practice when an investigation was going on in reference to whether a forest reserve should be created, and what its boundaries should be, that publication should be made so that everybody who knew anything about it should have a chance to be heard. There was an order dated May 15, 1891. I was in the Land Office at that time; that practice obtained then, but before such publication was made it was the rule and practice to make

temporary withdrawals of large parts of the territory. Then, 237 after that temporary withdrawal, the order of May 15, 1891, required the special agent who was examining the territory to publish a notice; but that practice no longer obtained after the act of 1897; I am clear about that. I cannot be positive as to any particular isolated case, but I say that was not the practice—the right of the examining agent to make the publication was taken away after the passage of the act of 1897; I think that that order of May 15, 1891, was never rescinded.

I do not know whether it (the circular) was ever formerly rescinded, but it was a circular directed merely to special agents, and was a circular which was in force and promulgated before the act of 1897. I think it was not formerly rescinded so far as I know.

Q. That is, although the order required publication, there were no publications, notwithstanding the fact that the order was never rescinded? A. The circular was only applicable—

Q. We will have the circular. A. To instructions to special agents.

The circular was directed to special agents of the General Land Office, and was issued May 15, 1891, long prior to the act of June 4, 1897. Forest reserve officers were not appointed until after the act of June 4, 1897, which authorized their appointment by the Secretary of the Interior. From that time forward, examinations were made by forest officers. Prior to that time they had been made by special agents under the circular of May 15, 1891.

The first temporary withdrawal of forest reserve was made in June 1891—the Pikes Peak forest reserve.

238 At this point the counsel for the Government produced the order of May 15, 1891, referred to by the witness, and counsel for the defendant Hyde read in evidence to the jury the following part of it, which was pointed out by the witness as referring to the matter of publication:

"After making an examination of the timber lands of any drainage basin, and having decided to recommend the same for reservation under the provisions of this circular, before submitting report in the matter, a notice should be prepared by the agent stating that such recommendation will be made to the General Land Office, and setting forth a description of the basin, together with a description of any public lands embraced therein, which it may be proposed to have excepted therefrom. It should also be stated therein that the object of such publication is to give timely notice of the proposed reservation in order that all parties interested who either

favor or oppose its establishment may be afforded due opportunity to submit their views to this office, by petition or otherwise, for the purpose of having the same considered prior to the final establishment of such reservation. This notice should be pasted in the land office or offices of the district wherein such lands are situated, and a copy of the same should be published at least once a week for three successive weeks in some newspaper published in the county, or each of the counties, wherein such lands are situated, and also in at least one other newspaper of general circulation in the state or Territory. If no newspaper be published in the county or counties in which the lands are situated, then the publication should be made in a newspaper published in the county nearest to such lands.

239 A printed copy of the notice of publication should be submitted with the agent's report, together with the affidavit of the publisher or foreman of each newspaper attached thereto, showing that the same was successively inserted the requisite number of times, and the dates thereof."

Special agents upon being detailed to secure the data in question will proceed without undue delay, to make in the districts assigned to them a thorough and careful personal examination of the public lands bearing forests or covered with timber and undergrowth, and ascertain by personal observation and by interview with Government and State officials in the vicinity of such lands, and with citizens who have an interest in the public welfare, all facts pertaining to the value of said forests or timber lands for all uses, purposes and requirements. The result of such investigations should be duly made the subject of report to this office."

(Witness resuming:)

I do not know whether there was any formal revocation of that order or not; I have no knowledge as to the public ever having been acquainted with the fact that it had been revoked.

As to the consideration of lieu selection cases in their order—if some case was held up in which some defect existed, and was laid aside, I do not mean that the entire work of the division would stop on that kind of cases; but the case immediately following it would have been taken up in its regular order, and if there 240 was some trouble about that, that would be put in the course of being corrected, and finally decided, and so on.

There was an order of Commissioner Hermann, as I understood it, that whenever a casual examination showed there was any defect, those cases should be laid aside and cases pushed through that were perfected, without calling for the selector to cure the defect.

"Q. Then it would happen, as I understand it, that very often a case would be taken up and put through which was far higher up in number than other cases, objections to which had been found, which were being considered. A. Yes; but the case immediately in order would be taken up, and if there was any defect existing in it a decision or letter would be prepared in that case, requiring the defect to be cured, before you would pass it over and go back."

All the lieu selections came finally before the Commissioner for



action, but these letters of approval were simply on a blank form and there was really not anything that the Commissioner could determine as to the merits of the case from that paper. The number of the case would be on the letter of approval; if he had been going along in the four thousands, and a paper would come along to him that was numbered 6,000 or 7,000, he could see that; but I passed upon that work most of the time I was in the office as Assistant Commissioner, and I paid but little attention to those numbers, by reason of the fact that there were so many cases in which there were defects, some defects which had to be cured, that the numbers

241 would not come in serial order at all.

In the lieu selection cases, the applicant was required to execute a deed of relinquishment and furnish an abstract of title, and he had to show, as to the school lands, a grant from the State which would pass the inspection of the officers of the land office in Washington, but there would not be anything in those papers which would show or disclose to the examiner if improper methods had been adopted in acquiring the land from the State; the applicant had to show an absolutely perfect title from the State, on paper. He was not required to make any showing in reference to the value of the land he was surrendering—it did not make any difference whether worthless land, or good land, if it was in the forest reserve, nor was he required to make any showing as to the value of the land he was selecting; and before the Act of June 6, 1900, he could select any vacant land open to settlement; after that he had to select surveyed non-mineral land. If, after the Act of 1897, a man had land in a forest reserve which was absolutely worthless for any purpose for which an ordinary person would use it, he had the right to exchange it for the best lands he could find that were open to settlement. From and after the passage of the act of June 4, 1897, up to 1903, as a rule, examinations for proposed forest reserves were made by the forest superintendents and supervisors, not by special agents. There may have been exceptions, but I could not say whether there was any.

Witness was asked to tell what was the practice and custom of special agents or forest officers who were sent out to make investigations about proposed forest reserves, in reference to making  
242 known their object to the people in the neighborhood, and he answered as follows: They were to make preliminary examinations of the land. After the passage of the act of 1897, temporary withdrawals were not made in every instance in the initial proceeding, but they were to make preliminary examinations of the land. They did not make known to the people in the neighborhood, in many cases they necessarily had to make known to the local interests involved, the fact that they were examining the lands and conferring with the people. In answer to a further question, witness stated that it would not be possible to make such examinations and find out where the timber was and what parts of the proposed reservation were pretty much occupied, and what parts were thinly occupied, without the public knowing what the examinations were being made for. In many cases the public did know, because the local interests were such that the officers had necessarily to confer with the people.

Their duty was to get all the information they possibly could as to the conditions and as to the advisability of creating a forest reserve out of the lands. But their conclusions upon that, they were not to disclose.

It would necessarily become known generally in the community, when a forest reserve was contemplated, and that it was contemplated.

I am temporarily employed now by the Department of the Interior in this case as a special agent, at a salary of five dollars a day and three dollars in lieu of subsistence—eight dollars a day.

243

*John McPhaul.*

By Mr. BAKER:

My name is John McPhaul, and I am a law clerk in the General Land Office. I was appointed principal examiner in the General Land Office in July, 1893. I served in that capacity until the fall of 1895, when I was appointed assistant attorney in the office of the Assistant Attorney-General for the Interior Department, and served about five months. I was reappointed principal examiner of land claims and contests in the Land Office in 1896. I served in that capacity until February, 1905, when I was appointed chief of division. Since July 1st, 1906, I have been law clerk. From 1897 down to 1904, in my position as principal examiner of land claims and contests, and as law clerk and law examiner, I received the letters prepared in the forestry division dealing with lieu selections, initialing those I approved, and objecting to those that were found deficient, and sending them back for further consideration.

Am acquainted with W. D. Harlan. From 1897 to 1904, he was employed in the General Land Office. Was chief of the Special Service Division until April 1, 1903, and as such he had general supervisory control of the officers under him and the management of special agents in the field, whose duty it was to investigate fraudulent land claims, trespasses on timber, etc.

Am also acquainted with William E. Valk. He was a clerk in the Special Service Division from 1894 or 1895 until that division was divided in 1901. He was then transferred to the Contest

244 Division. In Division R and Division P he had charge of forest lien selections; gave out the work and usually read the letters prepared in connection with it. He was connected with the forest lien selection business from its beginning after the first selections came in under the act of 1897, until September 15, 1902, when I succeeded him.

I am acquainted with the proceedings and practice in relation to forest lien selections from 1897 down to 1904.

The owner of a tract of land situated within a forest reserve was required, before making a selection, to execute a deed of relinquishment in accordance with the law of the State in which the land was situated, acknowledge that deed, record it, secure an abstract of title showing his ownership, and file the deed and abstract of title together with his application to make lieu selection in the Land Office of the United States land district in which the lieu land was situated, ac-

companying that application by affidavits showing the non-mineral character of the land, the non-occupancy of the land; and later the non-saline character of it, as well. That is, at a later date, after 1909, on the non-saline character as well.

The register and receiver of the local land office would then forward the papers to the Commissioner of the General Land Office. When they were received in the mailing room or file room of the General Land Office, the letter of transmittal was given a number and there would be marked across it "Received in the General Land Office" at a certain date. The selection was given a serial number,

beginning with the first of January; the practice being to go  
245 by the calendar year, instead of the fiscal.

At the beginning, or up to the separation of Division P into Division R, after being noted in the mail room and entered in a book kept for that purpose, with a serial number, the letters were transmitted to Division P, where it was entered upon a book in that division and charged to Mr. Valk, up until September 15, 1902, and after that date to myself. If the enclosure was found to be a selection, it was entered into a book kept for that purpose, in which the number of the selection was given, the base and the selected land, the name of the selector, and the forest reserve within which it was situated. The enclosure was then made into a case, with a docket number taking the same number as that given to the docket. It was then turned over to the clerk having charge of what is known as the base book—a book in which the forest reserves were arranged with reference to the townships, and bound, for the purpose of preventing duplication. It was entered upon that book, and then sent down to the Public Lands Division, at that time having charge of the tract-books, and was posted on the tract-books both as to the base and selected lands. In the case of the selected lands, the notation would be "Selected by X" on a certain date, giving the date, "Act of June 4, 1897." It was then sent back to Division P, later Division R, and entered in the files and given out in regular order for examination and adjudication. When reached in order by the clerk, he examined it, and if it was found that the land was situated within a forest reserve at the date of the surrender to the Government, that

the party was the owner of the land who surrendered  
246 it, established by the abstract of title, free of any incum-

brance, and if the land selected was free from conflict, according to the records of this office and also according to the certificate of the Register, and the showing in regard to the character and condition of the land in accordance with the requirements, two letters of approval were prepared, one addressed to the Register and Receiver where the base land or the land reconveyed to the Government was situated; the other to the Register and Receiver where the selected land was situated, advising each of those officers of the approval of the selection, and directing them to note the fact upon their records. If the land was surveyed, the case was made into a list the following Monday for patent, and transmitted by the Chief of the Division to the Recorder for the issuance of patent. If the land was unsurveyed, as selections were permitted

to be made prior to October, 1900, the selection took its place in a special file kept for that purpose, and was retained there until the plat of the survey was filed, and the selector adjusted his claim as provided in the rules.

The rule or practice obtaining in the Land Office in regard to cases required them to be taken up in the order in which they were received, except in certain cases made special. This rule included forest lien selections. The Commissioner or the Secretary, either, could, by special order, direct the advancement of cases in which event they would be advanced and examined.

When I took charge of the lien selection business in Division R, on September 15th, 1902, I found the work very much in  
247 arrears; I found about 800 cases out of the files on the desks of the various clerks, and I ascertained that about seventy-five per cent of those cases, or about 600, were out of order; of the cases so out of order, a great many stood in the name of F. A. Hyde, F. A. Hyde & Company, and C. W. Clarke.

Witness was here shown a package of papers representing selection No. 2904, involving the lands described in the first count of the indictment, and standing in the name of C. W. Clarke, and was asked what, if any, irregularities the papers disclosed, and the witness answered as follows: I find the case was received in the General Land Office and acted upon in twenty days after it was received. It was acted upon and a decision rendered within less than thirty days after it was received, and I find nothing to show that it was made special. The case appears to have been handled by Mr. Valk from the initials of the notations appearing on the record. The record is on the jacket enclosing the selection. The jacket is something like a card system. The case was certified by Division P to Division N, with a protest pending, undisposed of. Under the rules, contested cases were required to remain in the office thirty days, unless advanced by the Commissioner after notice to counsel. The work of the office was considerably behind, and it probably would have taken six months, at least, for this case to have been reached in its regular order, and disposed of. This selection was

received in the General Land Office December 29, 1899; the  
248 notation in Mr. Valk's handwriting; action taken Jan. 20, 1900. The selection came up from the local office at Vancouver, Washington, on appeal from C. W. Clarke from the action of the Receiver rejecting it on the date I have named. In a decision which appears to have been prepared by Mr. Valk, the Commissioner of the General Land Office reversed the decision of the Register and Receiver of the local land office and directed the acceptance of the selection. That was the action taken upon it.

A further irregularity in selection No. 2904 was that it was in conflict with selection No. 720 when approved. Selection No. 720 was defective both as to the land selected and the land relinquished. The selected land was a school section in the State of Washington, not subject to selection, and the base land was a school section in Oregon that had not been surveyed. Notwithstanding these defects, selection No. 720 was approved in 1899.

The record of selection No. 3030 involving lands described in count No. 32 of the indictment was shown to the witness and he testified that the selection was received in the General Land Office on September 18, 1900, and was certified as free from conflict on September 26, 1900. During this interval, it was necessary for the case to have been received in the mail room of the General Land Office, referred to Division P, docketed, jacketed, base-book examined, entered as to base and selected lands on the records of Division C, retransferred to Division P, examined with reference to its various abstracts of title, and as to the accompanying affidavits. In the ordinary course of business it would have taken thirty days, at least, for the selection to be returned to Division P from  
 249 Division C. The handwriting on the jacket is that of Valk, and his initials, with the exception of certifying it to Division X, September 26, 1900. As to more than half of this selection there was a conflict of record. The word "special" appears indorsed on the jacket in Mr. Valk's handwriting. The appearance of Henry P. Dimond, attorney for the selector, is noted on the jacket of the case. Henry P. Dimond also appeared as the attorney for the selector in No. 2904.

When selection 3030 was certified to Division X as free from conflict, there was a conflict as to the greater portion of the land. The conflicting claim was by the Northern Pacific Railroad Company and embraced about 1900 acres of the selected land.

The witness was then shown by counsel for the Government the records of about twenty more selection cases brought from the files of the General Land Office, which are pending in that office, at various times between the years 1897 and 1902, which involved lands described in the indictment, and upon examination of the papers he testified that it appeared from the papers themselves, and from the entries made on them, and on the jackets enclosing the same, in the course of business in the General Land Office, that they had all been taken up and acted upon in advance of the time of their regular order in the due course of business.

Some of the selections so advanced were in the name of F. A. Hyde; others were in the name of F. A. Hyde & Co.; and still others were in the name of C. W. Clarke. In others the  
 250 selectors were the grantees of F. A. Hyde, or of F. A. Hyde & Co., and in all the cases as to which the witness so testified it was shown that the defendant, Henry P. Dimond, had entered his appearance as attorney for the selectors.

Witness further states that he is acquainted with the practice and custom of the General Land Office in regard to reports of forestry officers and special agents as well. From 1897 to the time of the filing of the indictment all such reports were received in the General Land Office and were kept private until the case or the matter in which they were involved was acted upon; in the case of a forest reserve, or temporary withdrawal made. In the case of special agents' reports, until those cases had been disposed of by the Commissioner.

The witness here identified suspension order of November 21,

1902, and the subsequent order of November 26, 1902. By said orders all unpatented forest lien selections based on sections 16 & 36 situated in the Cascade Range Forest Reserve in the State of Oregon, and in certain designated forest reserves in the State of California, made by F. A. Hyde for himself, or in which his name appeared as attorney, or otherwise, were suspended until further order; and lists of all such selections both patented and unpatented were directed to be prepared.

#### Cross-examination:

In the lien selection business in the General Land Office, it  
251 did not make any difference whether the land given up was comparatively worthless, and the land taken up was comparatively rich; there was no limit to the number of acres of land that might be included in one application for lien selection.

The papers of selection No. 2904 show that other attorneys appeared in the case besides Henry P. Dimond. I am unable to say whether Mr. Dimond did anything or took any action in that case except to file his appearance as attorney for the selector. There is a paper that purports to be an appearance by Mr. Dimond. The jacket in each case is a record, and there was a record made of what were regarded as important actions on the docket. That was not very well kept up, however.

There was only one selection in the name of John A. Benson. When I took charge of the forest lien selection business in Division R, in September, 1902, F. A. Hyde had pending 31 cases prior to 1900; 67 received prior to 1901; and 28 received between 1901 and June, 1902. F. A. Hyde & Co. had pending 123 cases received during 1900; and 115 received between 1901 and 1902. C. W. Clarke had 48 cases pending that were received prior to Jan. 31, 1900; 190 cases pending received during the year 1900; and 57 cases received between 1900 and June, 1902.

A list entitled "Memorandum, Commissioner's Order, November 21, 1902," and marked Exhibit No. 21, was shown to and identified by the witness as made in the General Land Office under his supervision, and introduced in evidence. The list contains a mem-  
252 orandum of over 600 forest lien selection cases appearing in the names of F. A. Hyde, F. A. Hyde & Co., C. W. Clarke, Elizabeth Dimond, Henry S. Morris and A. S. Baldwin, in all of which selections F. A. Hyde appears to have been interested. The last column on the list was intended as a place for general remarks about the selections. Where F. A. Hyde was the selector himself his interest would be self-evident; where he was not the selector his connection with the case would be stated in the column for general remarks; as for instance his relationship as attorney would appear in that column. The list was made under the suspension order of November 21, 1902, which required the inclusion of all cases in which Hyde's name appeared in any manner; and the fact of his stated connection with any particular case does not necessarily show that he was personally interested in it.

In lien selection No. 2904 there is a notice of appeal served by

H. L. Clarke. This notice after being examined by counsel for the defendants, was admitted to be signed by H. L. Clarke, meaning Herbert L. Clarke, who was a clerk in Mr. Hyde's office, and the same was then introduced in evidence.

As to the practice in case the State of California or the State of Oregon made a claim that school lands had been improperly obtained from it and sought to get them back, I do not know of any cases of that kind; I never heard of one.

Redirect examination:

253 In lieu selection case No. 3030, Henry P. Dimond has entered his appearance in a general case, and also in the various cases taken from 3030, except one. The witness produced the appearance in question, and it was offered in evidence by counsel for the Government, and reads as follows:

“(Overt Act No. 32.)

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

DEC. 11, 1901.

Hon. Binger Herman, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of Isaac Liebes in the matter of Forest Reserve Lien Selection No. 3030, under Act of June 4, 1897, for certain land in Sections 4, 5, 8, 9, 15, 16, 17, 20, and 21, T. 8 N., R. 6 E., W. M., Washington, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for Isaac Liebes.*”

*Walter K. Slack.*

By MR. PUGH:

Resided in San Francisco since 1874. Land attorney and real estate agent. Known Frederick A. Hyde since 1878; John 254 A. Benson since about the same time; known Joost H. Schneider for at least twenty years. First met Henry P. Dimond in 1901.

Witness' business is to file selections for land in the State Land Office, principally at Sacramento. When I first knew Benson, he was engaged in surveying and acting as agent for other surveyors. Since 1891, Hyde was a land attorney engaged in buying and selling of land script—certain script has been issued under various laws of the United States, allowing the selection or location of public lands. He would buy and sell those rights. Sometimes located them himself or for his clients. He would file applications to locate lands in lieu of the 16th and 36th Sections. He was engaged in that busi-

ness when I first went to work for him in 1878 and 1887. I worked for him again in 1899. Engaged in the same business after June 4, 1897. He succeeded to the title of many lands—many state lands, purchased within forest reserves after the Act of 1897. He would surrender them to the United States and use them as a base of other selections of United States lands under the Act of June 4, 1897.

Benson was engaged in the same business as Hyde. Hyde had his office at 415 Montgomery Street; Benson had his office at 507 Montgomery Street, about a block apart. Hyde previously had his office at 630 Commercial Street. Benson used to have an office on California and Kearney Streets during part of that time. Can't state when Benson first opened his office at 507 Montgomery Street. He was there when I first knew him. Moved away, afterwards came back in the same office.

255 I was employed once by Benson as an office boy. I went to work for Hyde in 1878. Stayed with him for six or eight months, and then went to work for Benson for about seven years. Then I went back to Hyde. This must have been in 1886 or 1887. I worked for Hyde two or three years. Then went to work for the San Francisco Collateral Loan Bank. Went to work for Hyde, June 1, 1899. Remained with him until October, 1902. That was my last employment with Hyde. Was not employed by Benson after that.

Private telephone between Hyde and Benson's office. I was general clerk in Hyde's office. Looked more particularly after the lien land selections in Sacramento. Part of the time had charge of the forest lien land selections under the Act of 1897. During this time partially kept the books.

There was a joint account between Hyde and Benson. It showed the joint account between them. That account showed the money received from the sale of forest reserve bases. If any pieces were sold outside of California, the proceeds would be divided between the two; that is, where they sold it jointly.

The lands that were kept in that joint account were some lands I purchased in Washington, the lands in Oregon, and some lands in California, in bases that either one might furnish to the joint account. The majority of the Oregon and California lands in this account were 16th and 36th sections within forest reservations. School lands, I think, in all cases. Land standing in the name of C. W. Clark, for F. A. Hyde & Company, and Elizabeth Dimond were in  
256 this joint account, H. S. Morris and Rattenberry. The Oregon State lands stood principally in the name of F. A. Hyde or C. W. Clark.

There were really two accounts—one a docket showing the land sold, the forest reserve bases sold. That was kept in one book. The money received from the sale thereof was kept in another. He had a journal, and they used two pages as a ledger. They kept a ledger account of it. When any money was received that was joint, it would be charged to that account. Hyde would receive the money. Sometimes Benson would account for it to Hyde. Monthly settlements were rendered after an adjustment of the account was made. The



adjustment was made between Hyde and Benson. There was a dispute between them as to the amount of bases furnished and the amount of money received. Mr. Lavinson and myself were appointed to adjust the accounts, if we could. When any dispute arose, we took and submitted the matter. I would submit my view to Hyde, and I presume Lavinson would submit his to Benson. Lavinson and I would get together and discuss it, and whatever they agreed on it was done. I was present at practically the final adjustment of the account. Don't remember exactly, but I think about the first of the year, 1900. We could not agree on the adjustment of the account—Lavinson and myself. Neither could Hyde and Benson agree. I took the matter to an expert. Told him to go over the account and throw out everything on either side that he could throw out; that is, throw out everything Hyde and Benson were not clearly entitled to claim. I made out the account

257 under the expert's direction and submitted it to Hyde and Benson, and it was accepted. But my recollection is that it was after that the monthly statements were furnished from office to office. These statements would show the amount of money expended or received by either party, in connection with these forest reserve selections that were considered in the joint account. Must have been 50,000 acres in the joint account. The 50,000 acres were what was in the joint account the whole time I was there from 1899 to 1902.

When the monthly settlements came in, if I saw anything in Benson's account that I did not think should be charged to the joint account, I would submit it to Hyde. If he said put it in, I did it; if he did not, I would ask Benson or his office for an explanation. That did not occur very frequently. Don't remember talking to Hyde or Benson particularly about this joint account, except as I have stated. If there was anything in the statement that was not satisfactory, I would write a little note over to Benson's office. Sometimes I would speak to Lavinson personally about it.

I think the lands that Benson put in the joint account were principally in the name of C. W. Clarke. I think the name of Isaac Liebes also. I called Mr. Hyde's attention to it and he said Isaac Liebes was interested in that location. Isaac Liebes' name was on the docket in one case; the docket in which we kept the bases furnished by Benson for the joint account. The names were not kept on the money account at all, simply on the land account.

I don't remember the total amount of money involved  
258 in the joint account. There was a balance struck at various times; but I never figured up the total amount. Some of the land sold as low as three dollars—some as high as five dollars an acre. I was not interested particularly to know the amount received. At the time the adjustment was made, I think Benson gave Hyde a note for about \$13,000, if I remember right. I didn't have much to do with the account when I quit in 1902. In the money account we would simply refer to the docket, and we would show the lands that were sold.

Miss Farwell kept the cash account. I did not bother with that at all. The only item particularly of the expense that I remember

would be when Dimond went to Washington. His salary was charged in the joint account. I think Dimond went to Washington some time in the early fall of 1901. Don't remember the date. He came to Hyde's office sometime in the summer, I think, of 1901; might have been late spring. Hyde told me he employed Dimond to be his confidential man. When Dimond first came there, he occupied a desk in the room with Hyde, and when Mr. Samuels vacated the room in the rear, he took that, which was in the rear of Hyde's office, and a door was cut into the partition under the stairs to connect the two rooms. I think there were two desks in Dimond's room—one desk, anyway, and some chairs and some books. He had a phone that was connected with Hyde's office, and Benson's office I should say. Hyde's office was on the second floor—that is,

259 the first floor above the street, and it surrounded a square hallway. He occupied all the rooms on that floor. Hyde's office was on the north side of that hallway, fronting Montgomery street. Dimond's room was in the rear facing a little court, on the same floor and on the same side of that hallway. The phone in Dimond's room was connected with the private phone between Hyde's office and Benson's office. There was also a public phone. The main phone was in the main office. If either Hyde or Dimond was wanted, a bell from this main phone connected with their rooms. Dimond received \$150 a month. Hyde paid it when he first came there, and Hyde always paid it, except when it was charged to the joint account. It was charged to the joint account when Dimond went to Washington. Then Dimond got \$150 a month, and \$100 for expenses. He came to Washington in the fall of 1901, and came back, I think, in the spring or early summer of 1902. While Dimond was in Washington, whenever I charged his salary, it was charged to the joint account—one half to Benson. I charged it nearly always. There was part of the time when I was not in the office for several months. There was a suit of clothes for Dimond went into the joint account while he was in Washington.

Practically all of the school lands in forest reserves were purchased before I went into Hyde's employ at all. They were just then ripe for patenting.

With respect to applications—first the application was prepared, and the applicant would swear to it. It would be sent to Sacramento and filed. Any clerk in the office would fill them out, if it was given to him to fill out.

260 I have seen his applications filled out after they were signed. I may have filled them out, or other clerks—at Hyde's instance. They would be sent to the notary. Sometimes Hyde would send them, or the other clerks might send them. I might have sent them. They were sent by the office boy. I have seen the applicants go many times to the notaries, and I have seen the applications go without the applicants. There have been hundreds of applicants come in for us, and many times the applications would be prepared and given to the party, and he bring them back, and they would be sent to Sacramento. I have seen some that were filled out—signed in blank and filled out and sent to the notary.

I don't remember seeing money paid to these applicants, either when they came in and signed the papers, either in blank, or when they were filled out before they were signed. I have seen deeds signed and abandonments signed and assignments of the certificates of purchase signed at the time that the party would sign the application—signed in blank.

Saw Schneider at the Hotel Perkins, Portland, Oregon. Hyde asked me to go to Oregon and told me that Schneider was up there getting some school lands for him. One time I was in his room; some parties came in and signed some papers. I didn't pay any attention. Don't remember whether I saw the papers after they were signed. Paid no attention to how many people I saw in Schneider's room. Saw two or three people come in while I was in his room. No conversation between them and Schneider in my presence. Was in his room only once or twice. I was in Portland only a  
261 day—possibly a part of two days.

I never knew a person by the name of Elizabeth Dimond. Remember that name in connection with Hyde's business. The name appeared on the docket. I have seen papers signed Elizabeth Dimond that I witnessed at Mr. Hyde's instance. I did not see her sign the papers. Witness identifies deed from Elizabeth Dimond to the United States, dated November 22, 1899. Power of attorney to select lands dated September 27, 1899; another power of attorney to select lands dated same day. Slack's signature appears as witness to the signature, Elizabeth Dimond, on all three papers. Hyde's name also appears as witness on the last two papers. Papers marked Exhibits 24, 25, and 26. They were powers of attorney to select lands under the Acts of Congress, June 4, 1897, in lieu of and in exchange for the following described lands, to wit: (description of lands.) Exhibit 26 is a deed purporting to be signed by Elizabeth Dimond and witnessed by W. K. Slack, being a deed of relinquishment to the United States of all of section 16 in township 28, South Range 34, East; M. D. M., in Kern County, California, containing 640 acres. All three of the exhibits refer to lands described in count 26 of the indictment.

The only conversation I had with Hyde about going to Oregon was that he told me Schneider was getting applications for him in Oregon. Don't recall that he even said within forest reserves. When I got back, I reported to Hyde the result of my investigation in the Land Office. Gave him the data I obtained, and  
262 told him I had seen Schneider there. Some general talk, perhaps; but I don't remember what we said, if anything, about Schneider when I came back.

Schneider moved to Tucson some time, I think, in 1902. Might have been 1901—I paid no attention. In December, 1902, I saw Schneider in Tucson.

Mr. Hyde sent me a note to my office to come and see him. He accused me of writing to the Department about him. I denied it. He then said he had been informed that Schneider had written the Department, and said that I would corroborate it. I told him I had done nothing of the kind; that if Schneider had written anything

of that kind he lied. I convinced Mr. Hyde at that time I had nothing to do with it. He asked if I would go to see Schneider, and on the spur of the moment I said yes. I consulted with my friends. They advised me not to go alone. I told Hyde of this, and he sent his brother, M. D. Hyde, with me. He said a special agent had seen Schneider or was going to see him. Hyde wanted me to go to Tucson to have a talk with Schneider and see what he had said. I went to Tucson and saw Schneider. My recollection is that Hyde told me to find out what Schneider had said, and to tell him to keep quiet. M. D. Hyde went part of the way with me. I got to Tucson in the morning and left in the evening. When I got back I told Hyde that Schneider had written to the Department that he had Zabriskie, an attorney at Tucson, who had also written several letters. I told him Schneider had told me he had written the signatures of Elizabeth Dimond, and I think, Jennie Blair. Hyde thanked me for going down. Don't remember exactly what I told Mr. Hyde, 263 but told him all I could remember that Schneider told me.

My recollection is I told Hyde that Schneider would not do anything more. Witness was asked about a note sent him by Hyde. I handed the note to Mr. Samuels. Mr. Burns, the Government agent, had been to my office and asked me many questions. I turned the letter over to Mr. Samuels, to do as he saw fit with it. I don't know whether he turned it over to Burns or not. I turned it over to Samuels about January, 1903. I don't know whether the paper was destroyed in the fire or not. Samuels is now living in San Francisco. Had telephone message from Hyde don't remember what it was about. He wrote the note and sent it to me. Hyde telephoned me the Government agents were in California. Shortly afterwards, I got the note. I am unable to say whether Hyde said anything about Elizabeth Dimond to me over the phone. Hyde wanted me to go to Oregon about this time to see what the Government agents had been doing up there. I did not go.

Witness gives names of the other clerks employed by Hyde about this time, as follows:

While I was in Hyde's office the other clerks from time to time were: Miss Laura Farwell, Mrs. Belle Curtis, Miss Marion Doyle, Miss Andrews, Miss Susan Dickinson, Herbert Clarke, Miss Agnes McGillen, Mrs. Mary H. Mayberry, and the office boys were William Lahl, Charles Johnson, and Bridwell Evans.

F. A. Hyde & Co. was a corporation. F. A. Hyde was the president, and I was the secretary. I don't remember who constituted the board of directors. The business of the corporation was dealing principally in this forest reserve scrip. 264

C. W. Clark was a banker and capitalist. He had loaned Mr. Hyde considerable money, I believe.

When Dimond started for Washington, there were certain slips prepared of all cases pending on the selected land dockets. All cases pending in the General Land Office, List made out by Miss Doyle. My recollection is that the slips given Dimond included everything

on the docket, whether joint accounts or otherwise, had not been acted on by the General Land Office.

Am well acquainted with H. C. Morris and H. S. Morris. Not acquainted with their wives, although I have seen them. I don't know any person by the name of H. M. Morris.

Thereupon counsel for the Government proved by the witness the genuineness of the following letters, and read them in evidence to the jury:

"EXHIBIT 93.

No. 17.

Hyde to Dimond.

Subject: Suspension of Forest Reserve Selections.

JAN. 15, 1903.

I have your letter of the 8th. In none of your letters have you told me what is the present situation. Who has the charges—are they in the General Land Office or in the Secretary's Office. Will we be better off after Richards comes in than we are now.

It is a physical impossibility for me to comply with your suggestions. I do not know, nor have I any means of tracing the most of the people who purchase the 16th and 35th sections in California and Oregon. I do not know, nor do I know where to find, a single one of the entrymen in Oregon. They are not required there to give their addresses, and as a matter of fact, never do it. I took the papers in all cases just as they came to me. When I received an abstract showing a clear title, I paid for it and I never investigated to find who the party was, as long as he had a title. Of course I know some of them who live in San Francisco, but for me to select out a few that I do know, and get their affidavits, would make an invidious distinction against the others. When the reservations were proclaimed, it was a scramble between dozens of different curb stone real estate dealers to get in applications to the State to purchase the vacant school sections. It was generally known that I would buy any such lands, and these agents brought to me their titles and I paid for them. For instance, you have heard of J. C. Bunner with whom I did a good deal of business prior to his death about two years ago. He was agent for a large number of these applicants, and he got their applications and attended to getting the certificate of purchase. They generally avoided giving the address of the applicant because as soon as it was known, a lot of other dealers would go to the man and try to buy his claim, and overbid the man who gave the original information, hence it was an object to keep such rival dealers in the dark. It was none of my business as I thought, to inquire who owned the land—he might be a business man or he might be an unknown laborer—so long as I had a deed from him with the proper evidence of title from the States, I supposed I was all right. I know by report only

that some of the people who bought the Oregon lands came from Portland, but I never saw them. I took the titles as they came to me. It was absolutely unjust for the Department to suspend my business on the unverified statement of a blackmailer and I am sure I do not know of any way that I could comply with your suggestion. The man who purchases property anywhere takes his abstract as it comes to him. He does not look back for a series of years to find who the grantors were. I bought all the property in good faith and there is no sufficient showing to the contrary. There ought to be something very strong and conclusive to warrant any such wholesale suspension. It may be well to let the matter rest until Mr. Herman goes out of office, and then you should be furnished with a copy of the charges.

Very truly,

F. A. HYDE.  
D".

EXHIBIT 94.

No.

Hyde to Dimond.

JAN. 16, 1903.

I received the letters from yourself and Mr. Browne on the subject of the suspension order. There is much that I would like to have known, but as to which I am in the dark. The letter appears to be your personal advice. You state what the government will  
267 require. Do you have this from people in authority, or is it simply your idea that I must do certain things.

You have mentioned that the order made a great sensation. In what way has the sensation been evidenced. Does the Commissioner tell all parties in interest what he has done and why he has done it and what the probable effect will be, and does he tell them what they will have to do in order to get the suspension released.

How much publicity is there to the matter.

If I fail to proceed in the way that you suggest, what will be the consequences. Will the Department assume to cancel a selection, or will they simply let it rest.

Have you and Mr. Browne talked with any one in the office of the Interior Department about the matter. Do they expect to do anything except merely to await affirmative proof? If that affirmative proof is not made, what will the Interior Department do.

If they will suspend anything on the mere unsupported statement of a blackmailer, why would not my statement in return be equally effective to release it.

If you had been here when I was buying those forest lands, you would understand it better. Schneider, as you are aware, went to Oregon and attended to the business there. How am I to trace what he did. How am I to trace not less than 125 different parties who purchased the lands of the State of Oregon. It is possible, however, that there may be no trouble up there because the lands were all

deeded directly by the State to San Francisco parties, the names of the State vendees being as I remember, C. W. Clarke, A. S. Baldwin, Flora Sherman, a relative, H. S., H. C. and H. M. Morris, also relatives, J. H. Schneider and myself. I think these are all the people who received the deeds from the State of Oregon, but in California it was quite different. It is utterly impossible for me to trace all of them, and it would be very inconvenient if I had to trace others, for it would subject me to almost unlimited blackmail.

At the time when these lands were being purchased, I took everything that came to me, and never made any inquiries. I know a good many of the people, or did know them at the time, but many have disappeared. For instance, Mr. J. Bonacci, a bootblack in the barber shop. Where would I look for Mr. Bonacci now. He might have committed murder and be in the city all this time, and how could I find him, and what judge or Congressman could I get to certify that he knew Mr. Bonacci and knew that he took the land in good faith. He is none the less a real individual, and his deed is good, notwithstanding his lowly condition in life. Then again, take all the ladies and gentlemen of color, friends and relatives of my janitor. If they were told that for a comparatively small sum they had sold lands which afterwards became worth \$5 an acre, is it likely that they would help me to establish their bona fides. They were glad to get the money at the time, and I was buying forest lands then at \$2 and \$2.50 an acre. I have, as you are aware, had to spend hundreds and hundreds of dollars for certificates and new abstracts for lands that I have sold, and to now be compelled to submit to unlimited blackmail seems hard.

269 Then again, I had three or four people running through these reserves picking up titles, and I paid them half a dollar an acre profit on their purchases. They brought in the papers, the records showed the titles to be all right, and I bought them. I had no partner, and having no partner, and keeping my books in the loose manner with which you are familiar, I made no record of where I got the titles, or who the parties were.

It seems a very easy matter for a man in Washington to say—Prove to me who it was from you bought this property, and what kind of a man he was. In any ordinary transaction it would be possible. The title to city property is always held by people who are local residents, or who have friends or acquaintances, but a very different kind of people purchases States lands, because of the method by which the lands are sold. There is no identification required, no addresses need be given. All that an applicant has to do is present his application in the form the law requires, and at the end of three months he can pay in full and get his patent at a later date. Whenever there is a scramble for the purchase of State lands, the movement is engineered by brokers. They do not select the best class of citizens, but they go into the highways and byways, and the purchases are made by those people who are here today and there tomorrow. This is simply the result of a system. The sales are none the less legal, but it makes them impossible to trace.

You know how I buy forest lands. You know that if anybody



270 were to bring a deed to me with an abstract of title I would take it.

I do not suppose you ever knew J. C. Bunner, but he did a great deal of this business, and he got his profit on the titles he brought me. Ackerman has furnished me land in the same way, and all through the country little real estate dealers who could see a chance to make 25 cents or 50 cents an acre would pick up titles and sell them to me.

When the law was first passed I was very particular whose application I filed, and I had a fine list of bankers and professional business men of San Francisco, but I found that they were too sharp for me, and I had all the trouble and a good deal of expense, and only part of the profits, so I concluded that the partnership business was not good, and thereafter I just bought for cash what came in. Of course, in the deal I have all my relatives and all their relatives. I do not want to bother them if I can help it.

Tell me where the matter is now and how long it will stay there and what the next move will be. Try and find some way out of it other than the one you suggested, and by all means keep the thing quiet until Hermann gets out, and keep it quiet anyhow. I think there must be some way out of it which will develop later, but I want to know where you got your suggested method of procedure, and just what shape the thing is going to take in the land department.

I can see my mistake now in having the State patents issued in the names of the original applicants. I did that because I did not care to have the State records show the extent of my business, but  
271 if I had had them issued to me as assignee, I would suppose that inquiry on the part of the government would have been shut out.

I judge that if the matter is allowed to rest, it will get to such an acute state after a while that they will have to do something. I can not conceive that they would cancel a selection without affirmative proof of something wrong, and that they can not get.

I wish you would explain to Mr. Browne the whole basis of Schneider's statements. He was my ranch man and occasionally did a little clerical work in the office. While here he was sometimes sent to the Notary with deeds where the parties did not appear in person, but it was in cases where the signatures and the signees were known to the Notary, and while it may be irregular, it is very customary for the Notary to certify that the person appeared. Then as to his signing papers, there are always some papers which do not require original signatures, such as notices for posting. With his vivid imagination and malignant spirit, this was sufficient basis for him to make the wild statements which he did, which he would never dare to swear to.

Just as a sample of his character, I was the other day selling a piece of property to J. C. Franks, and the title to it was as straight as anything could be and he had the full abstract, but he said he had been warned by Schneider that I had no title to it. I told him that if he thought I had no title he had better not buy the land, but he bought it, nevertheless. In another case which happened while S. was in my employ and which was one of the incidents by which



I discovered his character, I had sold 80 acres of land to a party and patent was issued directly to my grantee, by the State, but Schneider told the party, who happened to be densely ignorant of legal matters, that the title was bad, and fraudulent, notwithstanding the fact that the location was made by my brother. I had a good deal of trouble with the matter before I could allay the party's suspicions. A third incident occurred just after he left. A Mrs. Powers, whom I had known for a great many years, had asked me to invest her money for her, and I had accepted \$7000 and refused to take any more. She notified me one day that she wanted the money immediately, and her suggestions and conduct regarding the papers and signatures showed me at once that Schneider, who was well acquainted with her also, had made some scandalous charges about my business. I made no inquiries, but she got her money immediately.

These things ought to be represented in some way to Richards, if he has any power, or to the person who does have the power. I suppose, of course, you will do nothing while Hermann is there.

F. A. H.

Ref. to Browne."

#### EXHIBIT 95.

No. 20.

Hyde to Dimond.

JAN. 20, 1903.

I possibly have given a false impression to you and Mr. Browne by my expressed disinclination to proceed and obtain affidavits from the original patentees in the manner you have recommended, that is to say, you may be under the impression that I can not get them, but I can in fact, get such affidavits in nine cases out of ten. I did not wish to be forced to do this if it could be avoided, but I have concluded that perhaps the best way is to accept the situation and am now going through my records to see from whom I have purchased lands, and I can send you a whole stack of affidavits, a large proportion of which will be from well known, responsible business men, capitalists, lawyers, etc. The small number whom I cannot find are those from whom I have purchased the lands through third persons, or who have left the country or died, and in a few cases where the parties had no fixed abode, and merely got their titles and sold them out without any inquiries being made as to who they were or where they came from. I can make a very healthy showing, and perhaps it will be the best thing that I can do.

I want Mr. Browne to understand that I have not the slightest fear of the result on the lines suggested by Schneider. What I do fear, as I have stated before, are the underhanded methods employed by the agents sent out by Hermann. If Mr. Richards will see that his agents proceed in their investigations without intimidation, misrepresentations or other improper methods, and if the only question involved in the existence of these people, I think I can handle the

matter very easily. What I have been fearful of was being black-mailed by irresponsible people. My fear comes not in my own doings, but in investigating the methods of those through whom I dealt.

Just to illustrate: My barber Stein, was the agent through  
274 whom several purchases were made of the State. My money transactions were all through him, and I do not know how much he retained for himself, and how much he gave to the parties. If a special agent were to go to some one of Stein's friends and ask how he came to take the land and how much he got for it, he probably would not know me at all in the transaction and each and every one of them would probably stand me up for more money before they would do a thing to defend their titles. To proceed in the manner you suggested, I would have to find them out, and say to them that I was the man to whom they sold their lands and that Stein was merely acting for me. Then they would think they had discovered something, and the race to which Stein belongs is not slow to take advantage of any chance for making money. Those of course, are not insurmountable obstacles, but you can see how embarrassing and troublesome it is.

I do not know where these two agents are or in what manner they will choose to proceed. They have not shown up yet. They know nothing and they can prove nothing, but they will make all the showing possible of our diligence and extraordinary perspicuity. The annoyance to me will depend upon the manner in which the matter is handled by Richards. It seems to me he could be talked to and made to understand that his agents are not detectives, and should conform strictly to their proper lines of business.

Yours truly,

F. A. HYDE.

Consult Browne."

275

EXHIBIT 406.

"No. 19.

Hyde to Dimond.

JANUARY 19, 1903.

"I received your telegram, which says you have written constantly. I received one letter from you dated the first of January, and the next letter from you was dated the eighth, a period of seven days during which I was waiting anxiously.

"You wrote on the first that you would see Mr. Browne that night, and I expected to get the result of the interview by letter the next day."

"During all this time I suppose you must have learned something about the status of the matter in Washington, and so wondered that I heard nothing from you.

"One letter was sent to Miss Farwell and another to Clark. Those are the only letters that have been received that were not directed to

me. I should judge that since the eighth the letters have been coming all right, and it is possible that you did not write them right between those dates. I cannot conceive that the mail would be tampered with, nor is there in fact anything in our correspondence that we could not publish. We are simply doing our best to circumvent a blackmailer. I do not see how I could answer your telegram in a like manner and give you any information. Otherwise I would telegraph you today.

"I send you herewith copy of a letter that I have just received from Mr. Hazard, which explains itself. You will see thereby that  
276 the special agents accomplished nothing, and if they are on their way out here they will probably be next heard from in the State land office. But I do not see what they are going to accomplish there.

"They can annoy me very much, however, if they pursue the tactics of intimidation and misrepresentation and bluffing which they did in Tucson, for they could go to the parties from whom my patents were derived and make them think something was wrong.

"It appears that the two agents are named Pugh and Steece. Can anything be done to call them off when there is a change in the Land Office? They can accomplish nothing except to annoy me. You will observe in Mr. Hazard's report of his interview with the agents that they are very close students of Sherlock Holmes. As a matter of fact, Schneider never made half the statements to them that they claim. They cannot have such documents as they claim. They have no report from the State Land Office, because no one remembers about anyone being there, and I should know if there had been, and on the whole they simply worked a big bluff.

"If they come here I do not see what they are to gain by it except the very thing I fear, and that is that they will go to the State Land Office and take down the names and addresses of the applicants, and then they will hunt them up and try to intimidate them into some confession, and as a good many of the applicants are ignorant and some of them are vicious, I stand a chance for trouble in that direction.

For instance, I received the other day a letter from  
277 Charles Hill, and enclosing a copy of a letter for the Commissioner sent out by Britton and Gray in which letter the Commissioner calls upon them for certain showings. For curiosity I looked up the name of the applicant and found the name to be C. P. Lyndell, a brother-in-law of Schneider. Now, as a matter of fact, I never saw Lyndell sign the application, I never saw him sign the deed, and for all I know Schneider might have signed his name, although I don't think so. But dealing with what I know of my own knowledge, it would be absolutely impossible for me to prove that Lyndell ever made that location or ever signed the deed. But I suppose that Schneider could get him to make any kind of a statement he pleased.

"I know I paid for it all right. But I would be perfectly helpless against their combined attempt to defeat my title.

"Schneider also brought in applications signed by some of his relatives and friends, and when the time came I paid him the money that

I had agreed to pay and got final deeds; but I never saw any of the parties, and some of them I don't know."

"The false things that Schneider is trying to fasten on me I do not fear, but I do fear the disreputable underhand methods of these special agents, as indicated in the letter from Mr. Hazzard. They will lie, browbeat and intimidate people, with the same recklessness that is manifest in getting proof in the criminal court.

Very truly,

F. A. HYDE.

D.

278 "Show Browne. Send wire January 24. Telegram should have read, "not written constantly, nothing to write. H. P. D. Received January 24."

*Marion L. Doyle.*

Direct examination.

By Mr. BAKER:

Stenographer, resides in San Francisco. Stenographer for Hyde during the years 1899, 1900, 1901.

The principal part of my work was having charge of forest reserve lien land selections; know defendant Benson; met him when I went to work for Hyde, would come into Hyde's office quite frequently and see Mr. Hyde in his private office.

Admitted by counsel that there was a telephone running between Hyde's and Benson's offices, not connected with the general exchange.

Met Schneider shortly after I went to work for Hyde. He was manager for Hyde's ranch in the country. He called on Hyde occasionally, but only for short periods was he employed in office, possibly a few weeks in the latter part of 1899, think it was in year 1900. I left Hyde in latter part of 1901. Think Schneider was in the office shortly before I left. He never spoke to me about his business, but I saw him making maps. Don't know what maps. Hyde

279 had all kinds of maps in his office, of California and Oregon lands. The maps Schneider was making were maps on paper that had been traced—traced maps. While I was employed by Hyde his principal business was making selections of lands under the Act of June 4, 1897.

Hyde and Benson owned certain lands jointly; divided up the proceeds of these lands, I believe. They kept books but I never saw the cash book or any of the account books of this joint account of Hyde and Benson. There were certain lands on my docket called joint lands, owned jointly by Hyde and Benson. These lands kept in the same book with other lands; were in account marked "joint account." Sometimes it said "Hyde and Benson Joint Account." Sometimes just "Joint Account." Never had any conversation with Hyde in reference to this joint account.

The names of C. W. Clark, F. A. Hyde, H. C. Morris and H. S. Morris appeared in this joint account. Also quite a quantity of

land in F. A. Hyde & Company, a corporation; a small quantity in the name of Elizabeth Dimond,—possibly 640 acres. I never knew Elizabeth Dimond. I witnessed Elizabeth Dimond's signature. Could not say that Elizabeth Dimond's name appeared in this joint account.

Witness is shown power of attorney of October 23, 1899, purporting to be signed by Elizabeth Dimond. (Exhibit 100.) My signature appears as witness. I did not see her sign it. I took it from a file where those application blanks were kept. In some instances those applications and powers of attorney were signed. The description of the land would not be filled in. Sometimes they were not signed.

280 In re most of the lands selected in the name of C. W.

Clark, he would sign a quantity of blank applications and papers in blank. Witness shown paper dated October 24, 1899, purporting to be signed by Elizabeth Dimond. (Exhibit 99.) My signature appears thereon—as witness. Did not see Elizabeth Dimond sign it. In re this paper, I spoke to Mr. Hyde about this selection and told him it would be necessary to obtain this power of attorney for posting notice on the land selected. I prepared the paper to take to Hyde and got it back the next day, signed.

The other clerks in Mr. Hyde's office while I was there were Walter K. Slack, Miss Laura E. Farwell, Herbert Clarke, Miss Andrews, Miss Dickinson part of the time, and the office boys Bridwell Evans, Willie Lahl, and Charles Johnson.

I had charge of preparing the applications for the selections of land under the act of June 4, 1897—the applications and non-mineral affidavits and all subsequent papers required. I filled in the application for the land desired to be selected, and described a like quantity of base land, and wrote the letter forwarding the application to the register of the State Land Office. I had the docket in which the base land was platted and I used whatever base land was available. The applications for lieu lands were kept in a cabinet. Most of these were signed.

Mr. Hyde acquired the title to the various forest reserve lands before I entered his employ. I had nothing to do with those state selections.

Identifies Mr. A. S. Baldwin as C. W. Clark's son-in-law.  
281 C. W. Clark freely came to see Hyde in his private office.

Identifies Flora M. Sherman as Hyde's sister-in-law, and H. C. Morris and H. S. Morris as relatives of Hyde's family.

I never knew any one by the name of H. M. Morris.

Had quite a number of powers of attorney signed by C. W. Clark and F. A. Hyde in blank. When I had occasion to make a selection I would go to the cabinet and get an application signed by C. W. Clark, and when the time came for the power of attorney I would fill one of these out, which I would get out of the cabinet, signed also. I would then fill in my name as witness and send them to the notary, either Thomas S. Burnes, Henry J. Lask, or Henry P. Tricou. The office boy would take them to the notary and bring them back. When we wanted the notary to acknowledge C. W.

Clarke's name we would not find Clarke but would just send the papers down to the notary to be acknowledged and would not inform Mr. Clarke in regard to it. When the papers came back they would have the notary's jurat and his seal on them. They would then be filed with the selection application.

The other paper I would fill out was the non-mineral affidavit, which I would get out of the cabinet and fill in with the description of the land to be selected. Very often the people who wanted the land furnished their own non-mineral affidavit.

A. We had some non-mineral affidavits on hand signed by men known to Mr. Hyde.

Q. You mean in blank? A. Well, now I am not positive about their being signed in blank. I remember that in one case  
282 there was a Mr. Barion who signed some of those non-mineral affidavits, but Mr. Hyde had inserted in those affidavits a township and range. I presumed the man wasn't familiar with the character of that entire township. I think I remember it was 4 south 18.

Q. What did you do with that particular affidavit that you refer to? A. There were several signed by Mr. A. Barion and several by Mr. J. S. Bunner.

Q. And what would you do with them? A. If Mr. Hyde wanted to select some land in that township he would say, "Have that accompanied with the affidavit of Barion," or Bunner, as the case would be.

Q. Who would put the jurat on that? A. I guess the same notaries.

Q. And how were they sent to the notaries? A. In the same way; I would give them to the office boy to take down.

Witness was then asked: What about the deeds in regard to these lands—deeds of relinquishment to the United States?

Objection was here made by counsel for the defendants to evidence relating to the deeds of relinquishment of the base lands to the United States. A motion was also made to strike out the evidence of this witness relating to the filling out and to the manner of the execution of the non-mineral affidavits. The motion and the objection were upon the stated grounds that non-mineral affidavits and deeds of relinquishment to the United States were  
283 used only in connection with the transfer of titles, or ostensible titles, already obtained from the States, to the United States; and on the ground that the indictment contains no charge of conspiracy to defraud the United States by means of irregularities or fraudulent operations in connection with the transfer of titles to lands already obtained from the States to the United States, but only in connection with obtaining the school lands from the states, and transferring these alleged fraudulent titles in exchange for lands of the United States.

Counsel for the defendants further objected, "to any evidence relating to alleged irregularities or improprieties in transferring the titles, or the ostensible titles, of State school lands to the United States, on the ground that the evidence so far has not disclosed and

the Government does not offer to prove, that this witness can identify any of those transactions or alleged improprieties or irregularities with any case in which the Government has averred or claimed that the grantee from the State was a fictitious person."

Counsel for the Government contended that the evidence was admissible as tending to show the general practice which obtained in Hyde's office; and as tending to sustain the charge of the indictment that Hyde and Benson were to cause the titles of the school lands, alleged to have been obtained by them in the names of fictitious persons, to be relinquished, assigned, transferred, and conveyed to the United States by means of false and fraudulent relinquishments, assignments and conveyances, either directly, or indirectly through the said Hyde or through the agents of said Hyde and Benson—C. W. Clarke and others.

The Court overruled the objection and allowed the witness to answer the question; and stated that the motion to strike out the testimony as to the non-mineral affidavits might be renewed at some later time.

"By Mr. BAKER:

"Q. The last question asked you was about deeds referring to these lands and deeds of relinquishment? A. Whatever I might have said about deeds refers to deeds of the property selected under the 97 act and not to the lieu lands, and not to the base lands."

I don't know anything about the deeds of relinquishment of the land to the United States. They were completed deeds, recorded and ready for use under the 97 act.

"By Mr. BAKER:

Q. On yesterday you said something about signing deeds. Did you say anything about powers of attorney? A. Yes."

"Q. And affidavits. A. Yes."

"Mr. BIRNEY: This goes in, if at all, under my objection.

"The COURT: It is the same as yesterday's ruling, and an exception is noted." (Referring to the last preceding ruling and exception in this bill of exceptions.)

"By Mr. BAKER:

"Q. How often would that occur? A. Sometimes when we were very busy I might send down several times to the notary in the day and at other times perhaps not for several days.

"Q. How many papers would you send at one time? A. Sometimes quite a number. We had sometimes five or six or maybe as many as ten."

Witness was then asked by counsel for the Government to give some of the names of the persons who signed blank selection applications.

"Mr. BIRNEY: I object to that also.

"The COURT: All of this may come in under the same ruling and exception. If it appears to belong to a different class, call my atten-



tion to it; but if it is of this same class let it go in under one exception. I do not think it can be excluded under the allegation to which my attention was called in the first count. I think it will have to come in and we will see later on what the evidence is that connects it."

The witness then answered:

"A. Of these papers which came under the '97 act, to which I have referred as these selections, some were signed by C. W. Clarke, some by F. A. Hyde, some by F. A. Hyde & Company, some by H. C. Morris, some by H. S. Morris, some by L. L. Rattenbury, and some by Elizabeth Dimond. Also some by A. S. Baldwin."

"Q. What do you know about the signing of papers by the Morrisses? A. These applications for the land were signed in advance of the selections being made, but when it came to the time to convey the property selected, under the act of '97, I 286 remember in several cases that the final deeds were made out and the papers were sent across to Oakland to be signed by H. S. and H. C. Morris."

They were returned properly authenticated—acknowledged before a notary.

Sometimes sold lieu land scrip at \$4.50 an acre, and sometimes \$5.00; I think less in large tracts. The selected lands usually paid for after the approval of the selections at Washington, and the deed of conveyance given.

Know M. J. Wright, State Surveyor General, and his son, Frank Wright. He had a position in the land office at Sacramento. Have seen both in Mr. Hyde's office, but don't know the nature of their calls. Seemed to be well acquainted with the clerks in the office, and sometimes speak to them and then go in and see Mr. Hyde. Would not be in Hyde's office very long. Mr. M. J. Wright came in very seldom—young Mr. Wright came in occasionally, but he never stayed any great length of time. When he came he usually saw Mr. Hyde; cannot say he always saw him.

First became acquainted with Dimond the middle part of 1901. He came into Hyde's office and stayed there several months, then made a trip to Washington "As I understood it, in the interest of Mr. Hyde." At suggestion of Hyde, I made a statement of number of selections which were suspended. Same had not been acted on in Washington. There was a delay, perhaps some pending for a year. Mr. Hyde had me make up a list of selections in the docket that were unapproved, and I made it and handed it to him. Made a

list of all of them. It included those which were in the joint 287 account, included all in the docket. I understood Mr.

Dimond took this list to Washington with him. Made this statement up perhaps a week before Dimond left for Washington. Don't really know what Dimond did in the office. Never had any conversation with him about his business there. He seemed to be reading from books.

During my employment with Hyde, Benson came in to see Hyde occasionally—I would say frequently; sometimes every day or every



other day, then not for a week or so. Don't know about his interviews with Hyde. My office was separated from Mr. Hyde's office. Benson would go through my office into Hyde's office. Never had any conversation with Benson about joint account. Never called in by Mr. Hyde when Benson was present. I wrote the correspondence relative to the locations under the act of '97. Had correspondence with the Land Office, and with the Commissioner's office at Washington. Took very little dictation from Hyde. Never took correspondence for other people in Washington in reference to Washington matters, except what I narrated. Know nothing about "Dear Sir" letters; never wrote any "Dear Sir" letters.

Know Mr. Levenson. His position with Benson was similar to mine with Hyde. Mr. Levenson would come to Mr. Hyde's office about selections that were made in which Hyde and Benson were interested.

On the same file that I spoke of—containing letters to people in Washington (Hyde's attorneys, Britton & Gray and Keigwin) there were letters addressed "Dear Sir" without the name of any  
288 person to whom they were sent. Don't know the subject matter of these letters. Mr. Hyde had a long table in his office and this file was on that table. I have seen these letters, but never read them. They were addressed "Dear Sir" and some of them addressed to Britton & Gray. They were out in open file on the table. I don't know who directed them or how they were sent out of the office.

I know B. F. Allen. Think he was a Special Agent of the Government in Southern California; saw him occasionally in Hyde's office. Don't think I saw him there more than three or four times. He would walk into the office, speak to the clerks then go in to see Hyde, stay a little while and go out. He would stay about half an hour, sometimes longer; perhaps less time.

I know J. C. Bunner. He is dead. I know A. F. Berion. Don't know whether he is living or dead. Never heard he was dead.

The only papers I have any recollection of being signed in blank by Bunner or Berion were non-mineral affidavits. They were in blank so far as the particular sub-division was concerned; but before being signed, Hyde would have inserted the township and range. When I would be required to select a forty-acre tract, or an eighty-acre tract, I would insert the description of the land in that township and range. I would then enclose the paper in an envelope and send it to the notary by the boy.

I do not know anybody by the name of H. M. Morris.

The ranch I spoke about Mr. Schneider being on was owned by Mr. Hyde in Contracosta County.

289 Witness was shown exhibits Nos. 96, 97 and 98 and testified that the same were in her handwriting.

At this point counsel for the Government introduced in evidence and read to the jury Exhibits Nos. 99 and 100, as follows:

## "EXHIBIT No. 99.

"Whereas, the undersigned, Elizabeth Dimond, whose post office address is San Francisco Cal., has made application to select under the provisions of the Act of June 4, 1897 (30 Stats. 36) in the U. S. Land Office at Waterville, Wash. the following described tract:

S. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  of Sec. 1 T. 38 N. R. 25 E. W. M.

And whereas, it is provided by Circular "P," dated January 29, 1900, of the Honorable Commissioner of the General Land Office, that a notice of such selection be posted on the ground described in the application, and the proof of such posting be filed in the U. S. Land Office for the District in which the land is situated.

Now, therefore, John Boyd, is hereby duly authorized and appointed as my agent to post notices on the ground described in my said application, and to make affidavit of that fact, and also of the fact that said notices remained posted during the period of publication.

Witness my hand this 24th day of October, 1899.

ELIZABETH DIMOND.

Witnesses:

MARION L. DOYLE,  
H. L. CLARKE."

## EXHIBIT No. 100.

"Act of Congress of June 4, 1897 (30 Stat. 36).

*Power of Attorney to Select Lands.*

Know all men by these presents:

That I, Elizabeth Dimond, of the County of ———, State of California, have made, constituted and appointed, by these presents do make, constitute and appoint John Boyd of Loomis, Washington, my true and lawful agent and attorney for me and in my name, place and stead, to locate and select, either in whole or in part in any United States Land Office or Land Offices, the full amount or any portion of Forty (40) acres of public land, subject to such selection, to which I am entitled under the provisions of the Act of Congress of June 4, 1897, in lieu of and in exchange for the following described land, to wit:

The Southwest quarter of the Southeast quarter of Section Sixteen (16) in Township Twenty-eight (28) South, Range Thirty-four (34) East of Mount Diablo Meridian, in the County of Kern, State of California, containing Forty acres. The said land is included within the limits of the Sierra Forest Reservation, Independence Land District, and has been surrendered by me to the United States in accordance with the provisions of said Act, and for the purpose of making an exchange for other lands.

291 Giving and granting unto my said Attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully and to all intents and purposes as I might or could do if personally present, hereby ratifying and confirming all that my said Attorney shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, I have hereunto set my hand and seal, the 23rd day of October, one thousand eight hundred and ninety-nine.

ELIZABETH DIMOND.

Signed, sealed and delivered in the presence of

MARION L. DOYLE,

H. L. CLARKE.

Exhibit No. 100 bears the following endorsements on its back:

"Power of Attorney from Elizabeth Dimond to John Boyd. Filed Aug. 12, 1901, M. B. Mallory, Register."

292 Cross-examination.

By Mr. WORTHINGTON:

Left Hyde's employ, I think, in December, 1901. Think Mr. Dimond was there only several months before I left. He went to Washington perhaps six weeks before I left; it might have been longer. May have been as far back as August, 1901. He was in the office several months, I think, before he left. He may have come about May. He may have come in June, and left in August. I cannot tell positively or even approximately as to the date that he came there or when he left for Washington. No reason to fix the date in my mind. Made no note of any kind of it. When he first came he had a desk in my office. There was a general office and then a small office, where I had my desk. The next office adjoining that was Mr. Hyde's. Dimond was in the same office with me. His desk was close to mine, during the time he was there he did not take an active part in the performance of the business of the office. I remember distinctly he appeared to be at his desk reading some decisions and opinions of the Land Office; reading law books. I got the impression that he was totally unacquainted with the land business and was studying it up so he could qualify himself to attend to the business, and was familiarizing himself with the law in regard to these land selections. He had nothing at all to do with the preparation of papers or with sending them to the notary, or anything of that kind. Before he went to Washington I undertook the preparation of the list of the selection cases. These were cases in which surrenders had been made and effort was being made to get the land from the Government in place of the surrendered lands. I had nothing to do with the business of getting the lands from the States. I knew nothing about that part of it. Sometimes there was a great delay and trouble in getting these

cases through the Land Office. Hyde's clients would write him and ask why approvals were so long delayed. He would tell me to write and find out the status. He would ask me if all the papers and requirements had been fulfilled. I mean by Hyde's clients that when a man wanted to select any land he would come to Hyde and give him a non-mineral affidavit, and ask him to locate certain lands. I would then select the base land from my docket and prepare the papers necessary and forward them to the Register of the Land Office. I would select the base lands that were open. Where a client made an application and wanted certain selected lands I would go to the docket and pick out the lands to be transferred to the Government in exchange for the lands which the client wanted. I attended to it without any instructions from Mr. Hyde. When I went there some lands had been pending in Washington for a long time. All the applications made by me were not approved very shortly afterwards; sometimes for six or eight months, and I wrote letters to the General Land Office about them. I attended to a good deal of this business, which was rather formal, without any immediate instructions from Hyde. The Land Office was constantly making objections and finding defects and putting us to trouble and annoyance, and Hyde employed attorneys, Britton & Gray, Mr.

294 Keigwin, and Holcomb & Keegan, trying to get these cases through. We were constantly having trouble and delay.

Hyde told me to go through the docket and make up a list of unapproved selections and not exclude anything, which I did. My recollection was that the list was completed before Dimond went to Washington; only a few pages—I gave it to Hyde. It contained the name of the owner of the base land, description of the selected land, the base land used to make the selection, date of filing in California Land Office, the date it was forwarded from that Land Office to Washington, and any other details that were important. No definite instructions from Hyde about making it up. I put in that list just what I thought would be useful and necessary information for an attorney who was coming here to attend to the matters in a proper way.

After Dimond came to Washington I had nothing to do with the correspondence between Hyde and him. Think Miss Andrews did it. Was only with Mr. Hyde a few weeks after Mr. Dimond left. I don't know who took charge of my desk afterwards.

After I left Hyde, went back there occasionally a few times. Herbert Clark was at my desk attending to these '97 selections.

"Q. Herbert Clark took that desk after you left? A. Yes; I misunderstood your question. I thought you were referring to Mr. Dimond's work."

Herbert did that. I very distinctly remember it. I have told all I know about Dimond's connection with the lien land business. There was no secret about it. Everybody in the office knew it in a general way.

295 Schneider was not connected with the office at all when

Mr. Dimond came there. I never remember Schneider as being connected with the office at all, except for a very short time

there, when we were busy, and he did come down from the ranch and was, I thought, helping Mr. Slack in making those maps; very indefinite recollection about when Schneider was there. Think it was perhaps a year after I came. Most of the time Schneider not there at all. He was up in the country nearly all the time. He would come down to the city, not very frequently. When he came to the city he would come into Hyde's office. It was only on one occasion that Schneider had anything to do with the work in the office, and that was for a couple of weeks. I think he was tracing maps then. He was in the same room with me, in the presence of the office force—no secrecy about it. The maps Schneider was making were maps of forest reserves. He was assisting Mr. Slack in that work.

I used the private telephone to communicate with Benson's clerks; and Hyde's other clerks used it when they wanted to; and Benson's clerks would use it in speaking to Hyde's clerks.

Saw contract between Hyde and Benson in Hyde's office; saw it lying around the office, on a desk or table; anybody could read it. I had nothing to do with the cash or proceeds of the selections. Witness shown contract. Identifies Hyde's and Benson's signature. I saw this agreement in the office. Witness remarks that when she saw the paper thought it was white. It is now buff colored, from the fire.

296 Counsel for the Government, having offered sufficient evidence as to the genuineness of the following contract, it was read in evidence, as follows:

*"Ex. Doyle Cross-Ex. No. 1.*

It is agreed between F. A. Hyde and J. A. Benson as follows:

That whereas said Hyde has purchased, or is about to purchase some 16th and 36th sections and swamp land in the Cascade Range Forest Reservation in Oregon, the cost of which will be about \$1.50 an acre, to which must be added the percentage charged by C. W. Clarke for advancing the money.

Now, therefore, the said Hyde agrees that the lieu land rights which will inure to the holder of said lands by surrendering the same to the United States, may be sold by said Benson outside the State of California, and said Hyde will furnish the said lieu land rights to said Benson at the first cost and expenses, and said Hyde and Benson will divide all of the profits over and above such costs, provided,

First. That the said Hyde retain one-sixth thereof, leaving five-sixths for such division.

Second. Said Benson agrees to sell one-third of said lieu land rights within one year, another third in two years, and another third in three years, from this Agreement, and any portion of each one-third that is not disposed of in any one year, shall not be subject to this Agreement.

If it be deemed desirable to use lieu land basis from another reservation than the one hereinbefore indicated, instead of the lieu from

297 the Cascade Reserve, then it shall be counted as if used from the Cascade Reserve.

Witness our hands this 12th day of September, 1898.

(Signed)

F. A. HYDE.

JOHN A. BENSON."

The entries I made on joint account were in accordance with this contract. When I came to Hyde's office there was a book with plats of the state lands, and history of the acquisition of the title. Simply showed the state lands on the book as having been patented. I had nothing to do with the records and proceedings after they had been patented. When Benson came in he usually went into Hyde's private office. If anybody else came to see Hyde, they usually went into his private office. There was a central hall and all of the doors opened into that central hall. Benson would come in openly and publicly. Just one entrance into Hyde's office, through the general office; no secrecy about it. There was a private entrance from Hyde's room out into the hall. If Benson had wanted to, he could have gone in that way, and not have come in where the clerks were, but he came through the general office. If a client came in who wanted to put through an exchange of state lands for Government lands, I would select the best base land to be put in.

Sometimes the Land Office in Washington would object to selections and hold them up, as we called it, on account of some defect, not necessarily in the title; but for some reason or other would suspend the selection. Then, if I had a case like that, I would not use  
298 any more land from that same base land. We tried to pick out what I thought would not meet with objection in the land office. Wanted what would go through.

Mr. Schneider was in Hyde's office only a short time after I went there, not 1901, as I thought yesterday; must have been earlier than a year after I went to Hyde's office that Schneider was there. It occurs to me I really did not know him well enough to have a conversation with him. Several months after I went to work for Mr. Hyde Mr. Schneider was engaged in the office on work for several weeks. After that he did nothing in the office during the time that I was there, that I can recollect.

Cross-examination.

By Mr. BIRNEY:

Witness states the only persons that dealt in scrip that she knew were Hyde and Benson. She knew C. L. Hovey was a land dealer but did not know of his selling scrip at all. She knew Charles Stewart as a man in business in San Francisco but did not know the nature of his business. Does not know that he was a land attorney. She knew Mr. Riley but does not state that he was a land attorney. These gentlemen would come to Hyde's office to see him just as Benson did, and go into his private office and talk with him, and Mr. Bunner and Mr. Lake would come from time to time quite frequently, and Mr. Freidlander. Hyde had a good many visitors;

received them all in his private office; no distinction concerning Benson.

Hyde and Benson in the business of selling state lands  
299 to be exchanged for other lands under the act of '97. This scrip I refer to as the base land.

Redirect examination.

By Mr. BAKER:

Think I saw contract between Hyde and Benson in Hyde's own office during the first part of my employment there. I think it was drawn up about the time of the passage of the Act of June 4, 1897. It was kept in an envelope with papers. I think I saw it on Miss Farwell's desk, or Mr. Hyde's desk, would not say which. I looked over it in a general way, cannot say I studied the contract over.

I never made any original entries on this joint account. Mr. Hyde had an old docket of land and he got a new docket like the old one to be uniform, and we entered the plats of the lieu land in a book, and then in the other docket I had the selections entered.

I never made any original entries on this joint account. I had nothing to do with the money part of it. I was not the cashier.

The private door leading from Hyde's office to the hall was locked on the inside; not used for people to open it on the outside and come in.

Did not know Schneider well enough to have a conversation with him for five months or six months after I went to work for Hyde. Before that simply used to say "Good morning"; did not get well acquainted with Schneider for four or five or six months, maybe.

300 Recross-examination.

By Mr. WORTHINGTON:

After Schneider had done the work on the maps and left, he dropped in the office occasionally to see Mr. Hyde. Never took his hat or coat off. Just came in a few minutes and went away. Came down on business of the ranch, to see Mr. Hyde about that. I would hear conversation between Mr. Schneider and Miss Farwell, about the bills of the ranch. She was the cashier, and paid the bills of the ranch, and I heard him speaking with her, talking about the ranch.

Recalled for further direct examination.

By Mr. BAKER:

When I knew Schneider during the time I was in Hyde's employ, he lived in Oakland, and after I left there I understood he lived in Tucson.

Recalled for further cross-examination.

By Mr. WORTHINGTON:

Went to work for Hyde about the middle or latter part of 1899. Was there about two and one-half years. During all that time

Schneider was manager of Hyde's ranch down in the country, but for a short period, perhaps several weeks, in the first of my employment by Hyde, Schneider came to the office to assist in the clerical work and made maps.

I had charge of the land docket, but not cash books or anything of that kind. The land docket I had were docket 19 and 20. I kept docket 20 but had to use the other docket, 301 docket 19, because that was the docket which contained the description and history of the acquisition of title to the base land.

Docket 19 showed the land obtained from the state. Docket 19 had a plat of the land and the name of the person who obtained title to the base land from the state, and any other facts connected with the base land. The names of Walter N. Bush and George B. Bush appeared in Docket 19. These men, and some others, were jointly interested with Hyde in obtaining the lands from the state and would get a part of the proceeds when the '97 selection was made and put through the Commissioner's office in Washington. Docket 19 would show who was interested, if anybody, with Mr. Hyde in any particular tract obtained from the state.

There were other people interested with Hyde in these state lands, whose names appeared on docket 19. H. C. Morris, H. S. Morris, Frank J. Sims, L. L. Rattenbury, Elizabeth Dimond and, I think, Mr. Woodward and Mr. Moffet, George Fredericks and the Sutros, bankers of San Francisco. Mr. Benson's name did not appear on this docket as being jointly interested with Hyde in any school lands.

Docket 20 contained the selections made under the Act of '97—selections of land in lieu of state lands. When selections were to be used I would go to Docket 19 and select the lands to be used and make the exchange. In docket 20 Mr. Benson's name would not appear. It was simply headed "Joint Account". It would not appear in that docket how he was interested or what he was to get out of it. In most of the selections where Hyde and Benson 302 were jointly interested or where appeared the words "Joint

Account" at the top of the page, the base lands in these cases were in the Cascade Range Forest Reserve in Oregon. Aside from the transactions entered as "Joint Account", there were a few other selections, not many, in which Hyde and Benson were interested. I remember only one in California, quite a large tract, in the Visalia land district. I think Benson got the client and Hyde furnished the bases. They were jointly interested in that one location. I do not remember any other in California. They were selected lands. No other instance in which Benson and Hyde had joint interest in any selection in California.

Hyde's office just around the corner from the United States Land Office, Benson's office in the next block, also near land office. Other land agents usually in that locality within a few blocks, around the land office.

About non-mineral affidavits: When Hyde's client would write and say he wanted to locate a certain tract of land, I would prepare



a non-mineral affidavit and mail it to him. Sometimes the party would know that a non-mineral affidavit was required and sent it along in the first instance. If they did not, I prepared one and sent it to them for execution. It was a regular form for them to acknowledge and swear to. These mineral affidavits were not actually prepared and executed in Hyde's office to any extent, except where Hyde had located the land for himself, and in that case he would get someone familiar with the land to execute it. It was the exception to the general rule to have the affidavit prepared and  
 303 executed in the office. In cases where a lot of papers would be sent to a notary at one time, Hyde would sell the right to selection to parties outside of California and they might make their selections in small tracts, 40 or 80 acre tracts, and in those cases he would send on all the papers that were necessary, and prepare applications and powers of attorney for each 40-acre tract, and in the case of a 640-acre tract that would require 32 powers of attorney—32 papers; a power of attorney to make the location, a power of attorney to sell, and there are 16 legal subdivisions in a section—sixteen forty-acre tracts; 32 papers for one sale of 640 acres; each one would have to be certified by the notary.

Berion was a surveyor, a mineralogist. Hyde engaged him a few times to go down and make an inspection of lands and report on them. Once on quite a large tract, and he made his affidavit—non-mineral affidavit, subsequently, as a matter of convenience. Hyde asked him to make non-mineral affidavit for this same land, for smaller areas. For instance, one non-mineral affidavit for every 40-acre tract. Berion furnished a non-mineral affidavit for this large tract. It came to the office already executed. And then afterwards, for convenience of making the locations in small tracts, there were a number of affidavits prepared covering the same subject matter.

Mr. Brunner in the same line of business as Berion; surveyor and made reports on land. Brunner made the non-mineral affidavits similar to Berion—another case of the same kind. The Brunner affidavits were not used. Hyde was going to use them on land he was going to locate for himself, but he did not locate it.

304 I was in Hyde's office over two years. Never went to Benson's office. Have never been in his office. Benson's clerks did not have access at all to Hyde's books or records. Benson or his chief clerk would come to Hyde's office, but always consulted with Hyde, or if they wanted any information about locations would ask a clerk in Hyde's office who had charge of that particular branch of the business. Other men besides Benson engaged in the same business came there. Nearly all of those engaged in the same line of business came occasionally. Benson came in more frequently than others, except Mr. Lake. He was there quite frequently for a time. Don't remember any specific cases where I sent non-mineral affidavits to a notary by the office boy Johnson.

By Mr. CAMPBELL:

In the selection of large tracts of land for joint account spoken of by witness heretofore—it was in Southern California. Each one, Hyde and Benson, furnished his own base for the selection.

## Redirect examination by Mr. BAKER:

Lusk was one of Hyde's clients. Lusk furnished his own affidavits for the land he desired Mr. Hyde to locate for him. I know Barrien was engaged to go down and look at this land. When he came back Miss Farwell gave him a check for his services.

Hyde and Benson each put up their base for the land in the Visalia district. Don't know in whose name the base was. Think  
 305 it was in the name of C. W. Clarke. The name of Bush, George B. and Walter N. appeared in the docket 19—there would be a plat at the corner of the page, and it said, "Locater, Walter N. Bush." When that base was used for selection under 1897 Act it would appear in docket 20 in joint account with Mr. Hyde. Locater is the person who applies to the state for the land in the first place. His name would appear as locater of 640 acres. In the other book it would say that that was to the joint account of Hyde and Bush—the same way with Walter N. Bush and the Sutros. In the other book where Benson's name appeared it just said at the top of the page "Joint Account, Hyde and Benson". Sometimes say, "Hyde and Benson", or sometimes "Joint Account, H. and B." Bush's name would appear in docket 20 in the same way. It would not show anything about the proceeds, because when the cash was paid for the land finally I think it went into the cash book. It did not go into the docket 20. It was the cashier's duty to apportion the proceeds between Bush and Hyde or Bush and Benson, as the case might be. I don't know about the division of the cash. I saw the large affidavit of Barrien. He brought it in with his report of the land when he came back from the country and got his check. It was a large tract. Cannot say how large.

## Recross-examination.

## By Mr. CAMPBELL:

All the men in the same line of business had their offices in that section of the city with Hyde. No other private telephone  
 306 with other offices, except Benson.

*Miss Isabella Kincaid.*

## Direct examination.

## By Mr. BAKER:

Reside in Oakland; employed by Wells Fargo Nevada National Bank of San Francisco, as Secretary. Employed by Hyde from April, 1888, to November, 1897, as stenographer and clerk. Hyde's office was at 630 Commercial street. His business was dealing in state indemnity school land selections. By indemnity selections I mean lands taken in lieu of these school sections that were lost to the state. They were often lost to the state because they were within a reservation or a lake or were mineral lands, or for some other such reason the state could not take them, and then it was entitled to other lands in lieu of those sections. After the passage of the act

of June 4, 1897, the applications filed with us were for the 16th and 36th sections situated within forest reservations.

We had a large number of applications for 16th and 36th sections within forest reserves.

My duties were to take dictation and write it out; fill out applications and other legal papers. He wrote letters to a great many people; to great number of clients, to the State Surveyor General, to the Commissioner of the General Land Office, and to any one of a great number of people who were officials, in connection with land legislation. He wrote a great many letters addressed "Dear Sir",  
307 that I judged were to somebody in Washington. I judged this from the tone of the letters. They referred to pending legislation in regard to lieu-land selections, to proposed forest reserves, and things of that kind. Also to the status of applications made by Mr. Hyde and awaiting approval by the Commissioner of the General Land Office, so that they could pass to patent. There was never any name given me for those letters. They were simply addressed "Dear Sir", dictated to me, and I wrote them out, handed them to Hyde and never saw them again. There were a great many of these letters during the entire period of my employment. I copied the letters and returned them to Hyde. I did not direct the envelopes. I don't know who directed them. At Mr. Hyde's suggestion I directed envelopes to J. J. Barnes, in Washington. I did not prepare the letter that went in the envelope. I cannot give the detail of what was said in these letters about proposed forest reserves. I remember generally they referred to that. I think generally they stated what Mr. Hyde heard in regard to proposed forest reserves, and asked if what he had heard could be confirmed. I think the status of the applications then pending was discussed, the probability of their approval, and suggestions made as to hurrying their approval and getting them finally acted on.

In relation to acquiring school lands in forest reserves, we would fill out an application for the land desired, have it signed by the applicant, and then I would return the application to Mr. Hyde. My  
308 business was filling out the blanks, in addition to my stenographic work. I usually filled out a blank application and a power of attorney—a general power of attorney. The applicant had to sign the papers. I gave them to Mr. Hyde and usually saw them again after they had been acknowledged before a notary and were ready to be forwarded to the State Surveyor General at Sacramento. Sometimes the applications were already signed by the applicant before I would write in the description. Mr. Hyde would hand me an application and power of attorney, as I remember, and sometimes the affidavits, but the affidavits as to the character of the land were not signed by the applicant. When I would get these applications and powers of attorney signed in blank I would fill in a description of the land desired, Mr. Hyde would give me the description. Then I would return the papers to him. Sometimes I would be given one to fill out and sometimes half a dozen. Sometimes after I gave them to Mr. Hyde I would see them again the same day, sometimes the next, sometimes not for several days. When I

gave these papers to Mr. Hyde they would not have the notary's certificate. When he returned them to me the notary's certificate would be on them. I think some of the notaries, after the act of 1897, were Henry P. Tricou—he was the principal notary—also Lee B. Craig, a man named Knox, and one named Mason. When I handed these papers to Hyde usually they were not folded. When they came back to me they were folded and ready to be forwarded to Sacramento. When he handed them back sometimes they would be in envelopes and sometimes not. As far as I can recollect, I always got them

back from Mr. Hyde. Sometimes Mr. Hyde would give me  
309 packages of papers and I would give them to the office boys to take to a notary. The package did not come back to me; it always came back to Mr. Hyde from the notaries. I did not see the package after I gave it to the boy. Did not see the package when it came back to Mr. Hyde. After I gave the package to the boy, sometimes it would be a few hours that I would get the applications with the proper jurat, sometimes the next day.

"Q. Now state if you can remember what quantity of applications and powers of attorney, signed in blank, you had on hand at any given time while you were there? A. I never knew what we had on hand. I don't know that there were any in blank on hand. They were handed to me one or two at a time, signed in blank."

When these applications would be handed to me, sometimes a memorandum would be given me of the land to put in, and sometimes I would get it from a plat. The section would be marked off on a plat. I had no place to go in order to get any information in regard to what to put in there, except from Mr. Hyde or the Chief Clerk.

"Q. Who was the chief clerk at the time you were there? A. J. H. Schneider, at the time I left his employment."

"Q. Did he ever give you data to put in? A. Yes, I think he did."

"Q. Where did he get it? A. I don't know."

310 "Q. Did he have maps there in the office? A. Yes, he had maps and plats."

"Q. What sort of maps and plats did you have? A. We had blue prints and large tracings."

"Q. And what did they show? A. As far as I remember, they showed the forest reserves and the land within them."

"Q. In how many of these cases did you receive the data from Mr. Schneider to write into one of these applications? A. In a minority of cases, I think—usually from Mr. Hyde."

"Q. Where you took an application and found it fully prepared and signed by the applicant, in whose handwriting would the body of the application be? A. Usually in Hyde's, or one of Hyde's clerks—Miss Farwell, who was also there."

Hyde would hand me a memorandum of land, perhaps 320 or 640 acres of school sections. He would say, "Make out an application and power of attorney covering this land." I would go and get the blanks. I knew where they were. We had a case of blanks; and I would make them out. I then handed the papers to Hyde. Some-

times I would get them back before it was acknowledged by the notary. In that case, Mr. Hyde would say, "Mr. so and so is here; send a boy down with him to the notary with these blanks. Sometimes I didn't get it back until after it was acknowledged by the notary.

311 "Q. Take a case that was fully filled in and signed and not acknowledged. Have you any memory as to ever sending any of those papers to a notary? A. No; I do not recollect it."

Schneider was in the office between one and two years, I think, while I was there. He was chief clerk at that time. He was frequently sent to Sacramento to file applications and, as I remember, would make plats of the land. He would supervise the work of the clerks in the office. There was a good deal of clerical work. He would allot the work to the clerks. During Schneider's employment, he made some of the maps. Before that, whoever happened to be chief Clerk would make them. I don't remember whether I ever saw Mr. Schneider make any maps of proposed forest reserves. I left the office in November, 1897, and was succeeded by Mrs. Curtis.

I know J. Cummings and J. P. Pryor. I saw them a great many times in Hyde's office; Cummings, during the entire period of my employment, I think; and Pryor during the latter few years—perhaps two or three years. I understood they were special agents of the Interior Department.

Don't know what Cummings and Pryor would do there. They saw Mr. Hyde frequently.

After Act of 1897 Mr. Cummings came to the office. Don't recollect about Pryor. Once there was a gentleman there who dictated a report in regard to a proposed forest reservation to me. I wrote it and handed it to him.

"Q. How did you come to receive the dictation? A. He wished to dictate his report and said that Mr. Hyde had said he might dictate it to me.

312 "Q. Did you see the man there in the office often? A. Not more than two or three times a year.

He was there a number of times and, as I recollect, it was on his last visit that he dictated the report. As I remember, the report was addressed to the Commissioner of the General Land Office; and was as to the character of the lands in a proposed forest reserve. Think it was the Sierra Forest Reserve. Would not be sure. As nearly as I can recollect it, the name of the man was J. B. Satterlee. I am not sure that is correct.

By Mr. WORTHINGTON:

"Q. Was this after June 4, 1897? A. No; I think it was just prior to June 4, 1897; just prior to the passage of that act; but I cannot be sure about it."

Recalled for further direct examination.

The "Dear Sir" letters were written covering the entire period of my employment, as I remember. I don't know of any difference

in the manner of receiving applications to purchase lands before the Act of 1897 and afterwards.

Cross-examination.

By Mr. WORTHINGTON:

I was first asked to recall what I remember about the "Dear Sir" letters about five years ago, when Mr. Burns and Mr. Pugh  
313 visited California. I think it was the latter part of 1903, about the fall; almost six years after I left Hyde's employment. In the meantime, I had no occasion at all to refresh my memory about them, or to recall what was in them. I think I have correctly stated what was in them. I do not recollect any correspondence in relation to applications under the act of June, 1897. So far as I remember, there was nothing in the "Dear Sir" letters up to the time I left that referred to any business of the Land Office under the Act of June, 1897. There was lieu-land business before the act of 1897; that is, when a sixteenth or thirty-sixth section was within a forest reservation, or was mineral land, or in the borders of a lake, and lost to the state for that reason, the state was allowed to select other lands in lieu of it. The state could do that itself, and the state did it on the application of an individual, usually. The individual bought the land and got the state to get the land for him. For instance, if anybody knew of a hundred and sixty acres of land which he would like to get title to—public land—he went to a land attorney like Mr. Hyde, and asked him to find 160 acres that had been lost to the state. Then he applied for the 160 acres that he wanted in lieu of the 160 acres that were lost. While it was done in the name of the state, it was really for the benefit of the individual. This had been going on during the entire period of my employment with Hyde, from 1888, and longer. There was a very great deal of lieu-land business before the Act of 1897 was passed. When I testified this morning about what went on as to lieu-land transactions, I meant  
those transactions, because there were no lieu-land transac-  
314 tions under the Act of 1897 while I was there. Those applications were for sections in place.

Redirect examination.

By Mr. BAKER:

When I testified this morning about applications in Mr. Hyde's office, I referred to both before the Act of 1897 and afterwards. There was no difference in making out the applications. It was just the same. I did not intend to testify that there was no business done in the office under the Act of 1897 while I was there. There were no "Dear Sir" letters written in regard to the 1897 business, that I recollect, but we filed a great many applications—at least, we made out a great many under the Act of 1897, in the State Land Office. There was business done with the State Land Office while I was there; but none with the General Land Office, and the business was carried on, in the manner of preparation of papers, after the Act of June 4, 1897, while I was there, just as it had been carried on

for many years before. After the Act of June 4, 1897, the applications were principally for sections in places. Prior to that there were hardly any applications for sections in place. There were no sections in place left. They had all been taken up. After the Act of 1897 there were sections not in forest reserves which were thrown open to the States.

Recalled for cross-examination.

By Mr. WORTHINGTON:

315       Talked with Mr. Worthington about matters concerned in this case two or three times since last on the stand.

"Q. I want to ask you to explain to the jury what you meant, or what there was about Mr. Schneider taking Mr. Slack's place. A. Well, shortly before I left Mr. Hyde's employment, something over a year or a year and a half before, I think, Mr. Slack resigned his position with Mr. Hyde, and Mr. Hyde did not have any suitable person to take his place. He brought Mr. Schneider in from the ranch, and spoke of trying him for office work, to see if he could not succeed Mr. Slack. While I was there Mr. Schneider made the trips to Sacramento which were necessary in the business, frequently, and he also made the maps and plats for use there, and he would apportion the clerical work among the clerks in the office. Sometimes he was there every day for several days, and sometimes he was not there for a number of days consecutively. That was what he was doing when I left. Whether he ever really succeeded Mr. Slack after I left I cannot say, but he was trying the work when I left. That was why I spoke of him as the chief clerk. I always thought of Mr. Slack as the chief clerk, whether that was his title or not. He had charge.

"Q. You do not mean that anybody ever called either of them chief clerk, do you? A. Not that I am positive of. I thought they were.

"Q. Can you tell me whether or not, during the time Mr. Schneider was there and after Mr. Slack left, Mr. Schneider was  
316       still attending to his business as foreman of the ranches, and coming in occasionally about that work? A. I understood that he was.

By Mr. BAKER:

"Q. How did you understand that? A. Because he would go over to Black Diamond, or Gilroy, and we would write him on ranch business."

Mr. Slack left there more than a year before I left. I left in November, 1897, so that Slack had nothing to do with the business after the act of 1897, while I was there—nothing up to the time I left. It was not the general rule for applications for state lands to be signed in blank. Neither was it the exception. The minority of the applications were signed in blank. The majority were filled out and signed by applicants in my presence, or else mailed to somebody for signature. All those that signed in my presence went before a notary. I would send a boy with them to the notary. As far as



I know, applicants after signing the applications went before a notary public. I had no personal knowledge of any notary taking acknowledgments on these applications without the applicant being present.

There was no private telephone between Hyde's and Benson's offices while I was there. I always regarded Hyde and Benson as competitors in the State selection business, the lieu land business. Benson sometimes came to Hyde's office both before and after the Act of 1897.

317 "Q. How long before the act of 1897 had been passed did he occasionally come there? A. For a number of years. I think Mr. Benson was not in San Francisco when I first went to work for Mr. Hyde, but for several years before I left he was coming in and out. I did not hear them talk their business over."

The reason I regarded them as competitors was that when there was a large amount of base land opened up for use, Hyde was always hurrying his applications in to Sacramento to get ahead of Benson. He sometimes sent a clerk to Sacramento to get ahead of Benson. He would sometimes send a clerk to Sacramento with them for that purpose. It is several hours ride on the train from Sacramento to San Francisco.

(Counsel for the Government admits it to be 93 miles.)

These applications were not sent by mail, but by a messenger, because they would get there sooner. A messenger sent the night before would be in Sacramento when the Land Office opened in the morning.

I kept what Hyde called docketts while I was there, which showed the entries of applications and the status of the application, and what action had been taken upon it by the various land officials; that is, applications for state selections in lieu of school lands. That was a business that went on long before the Act of 1897. That business was large before the Act of 1897 was passed at all. There were a number of these docketts. After the Act of 1897 was passed, applications for state lands under the Act of 1897 were kept in the same book during my employment, as I remember it. We may have started a separate book, but I couldn't say. Anyhow, I kept it. I don't recollect any joint entries at all in the books

318 during my employment. No recollection of any with Mr. Benson. I have no knowledge that they had any joint business in relation to getting school lands after the Act of 1897 was passed, during the time I was there. When Hyde made applications for state school lands for himself or a client, a power of attorney was always taken from the client, a general power of attorney. I think that was the rule; I have no recollection of any exception.

The witness is shown power of attorney about which Mrs. Curtis testified, as hereinafter stated, and asked to tell whether the powers of attorney which she says were always filed with the applications for state lands were like that.

"A. No, sir; my recollection is they were not. They were general powers of attorney, to sell, assign, transfer, relinquish, substitute or



handle the application in any way which seemed best to the attorney."

This is a new form to me. I do not recollect it. Not the one we used when I was there.

There was not a power of attorney filed with the application. The power of attorney was taken from the applicant when he made his application and held for future possible use in Mr. Hyde's office. It was not a paper that was filed with the application at all.

Redirect examination.

By Mr. BAKER:

I cannot tell the names of the applicants, but I have personal knowledge of them going before notaries. I know that I  
319 sent boys down to the notaries with applicants. The knowledge I have of Benson's having applications for lieu land selections would be from reports which our clerks would make, and the transcript which would go to the State Surveyor General's office showing the applications filed, and showing the name of John A. Benson, as attorney. They would show the name of the applicant, a description of the land, and the name of the attorney who filed the application.

Witness was asked what she meant by saying that she knew that Benson was filing applications because she would see his name mentioned as attorney.

"A. That didn't necessarily mean a power of attorney was filed.

"Q. Explain what it meant. A. It means that when the application was filed with the State Surveyor General, the person having charge of it, managing it, engineering it through the Surveyor General's office, and to patent with the Commissioner, would have his name recorded as well as the applicant's name."

*Charles A. Johnson.*

Direct examination.

By Mr. PUGH:

Hyde's office boy. Twenty-two years old. Lived in San Francisco all my life. Know all the defendants, worked for Hyde for a year and three months from latter part of 1900 until January, 1902, as  
office boy, at 415 Montgomery street. My duties were to open  
320 up the office in the morning; get the books out of the safe so the clerks could use them; go for the mail, and do an office boy's work.

Names other employes of Mr. Hyde, among whom were Herbert Clarke, Mr. Slack, Miss Doyle, Miss Farwell, Susan Dickinson and Miss Andrews.

"Q. Was he (meaning Schneider) employed in the office at any time while you were there? A. Well, he used to come in and out of the office. Possibly he might not be around for several weeks at a time; but he would be in and out."

I would get different papers from the different clerks in the office, take them down to the notaries and wait for them to sign them, put

the seal on them and bring them back. Would get them from anybody in the office. You might say that started from the first day I went to work, and continued until I quit. I would take the papers to the notary. He would put his signature on them and his seal and give me the papers to take back to the office. I would wait for them while he worked on them. Nobody was present before the notary when he put his signature and seal on the papers. This occurred maybe four or five or six times a day, and it would be three to four and five different papers a day. From what I remembered, they were such papers as non-mineral affidavits, deeds and applications for the purchase of school lands. When I took the papers back to the office I would give them to whoever handed them to me. Which-ever clerk handed them to me I would give them back to them.

"Q. I show you paper and ask you to look at it. A. I remember it.

321 "Q. State whether any of the papers that you carried to the notaries were papers of the character of this? A. Yes, sir.

"Mr. WORTHINGTON: That is one of those blank applications?

"Mr. BAKER: Yes." (Exhibit 101.)

(This is a blank application to purchase state school lands and is offered merely to show the character of it—the general character of such applications. It was read as follows:)

"Application to Purchase State Lands. 101.

"Location No. —.

— Land District.

STATE OF CALIFORNIA,

County of —:

"To the State Surveyor-General, Sacramento:

I, — of — County, do hereby apply to purchase the land hereinafter described, and in support of my application I do solemnly swear that I am a citizen of the United States, a resident of this State, of lawful age. That I desire to purchase from the State of California, under provisions of title eight of the Political Code, the following described land in — County, to-wit: —, (4 blank lines)

322 Containing — acres. That there is no occupation of said land adverse to any that I have (a). (4 blank lines) That

I desire to purchase the same for my own use and benefit, and for the use and benefit of no other person or persons whomsoever, and that I have made no contract or agreement to sell the same. (b) (2 blank lines). That said land is — suitable for cultivation; that I have not entered any portion of any lands mentioned in section three thousand four hundred and ninety-four of the Political Code (to-wit, the unsold portion of the five hundred thousand acres granted to the State for school purposes, the sixteenth and thirty-sixth sections, and the lands selected in lieu thereof), which, together with

that now sought to be purchased, exceeds (c) — acres, and that said land is — timbered land.

Post Office Address: —, —  
— County.

Subscribed and sworn to before me this — day of —, 189—.

(a) If there is an adverse occupation, then the affidavit must show that the township has been sectionized three months, and that the adverse occupant (giving his name) has been in such occupation for more than sixty days since the plat was filed in the United States Land Office.)

323

(Section 3495, Political Code.)

(b). If the land is suitable for cultivation, then here add 'That I am an actual settler thereon.'

(c). If the land is suitable for cultivation, then the area to be here inserted must be three hundred and twenty acres, otherwise six hundred and forty acres.

NOTE.—If the applicant is a female, the affidavit must show 'That she is entitled to purchase and hold real estate in her own name.' (Section 3496, Political Code.)

Lands belonging to the State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.—(Constitution of California, Article XVII, Section 3.)

Any false statement contained in the affidavit provided for in section three thousand four hundred and ninety-five, defeats the right of the applicant to purchase the land, or to receive any evidence of title thereto, and if willfully false, subjects him also to punishment for perjury. Timber lands belonging to this State shall be sold for cash only; and the Surveyor-General and Register of the State Land Office must make and enforce all necessary rules and regulations to prevent the sale of or issuance of any evidence of title to any timber land of the State, except on payment in cash of the full price fixed therefor by law.—(Section 3500, Political Code.)

All applications, under whatsoever Act, filed in the office of the Surveyor-General, must be retained ninety days before approval, and must be approved (when there is no conflict) by the Surveyor-General, at the expiration of six months, subject, however, to the provisions of sections thirty-four hundred and six and thirty-four hundred and seven of this Code, and all unapproved applications which have been on file over six months, wherein the approval has not been demanded, or wherein the contest has not been referred to Court, or a demand made for an order of reference, as pro-

vided in section thirty-four hundred and fourteen of the Political Code, shall be null and void.

This Act shall take effect on the first day of August, eighteen hundred and eighty-five, and the Surveyor-General shall give notice to each applicant to be affected thereby, by sending to said applicant, or his attorney, a copy of this Act.—(Section 3498, Political Code.)

### Read Your Application Carefully.

(Endorsed on back as follows:) "Application No. —, — Land District. (6 blank lines.) Sec. —, Tp. —, Range —, — Meridian. Containing — Acres. —, Applicant. (2 blank lines.) Received and Filed —, 189—. —, Surveyor-General. 325 By —, —, Approved —, 189—. —, Surveyor-General. By —, —, Deputy."

Mr. Slack, Miss Doyle, Miss Farwell and Herbert Clarke would hand these papers to me to carry to the notary. When they were handed to me they would be filled out. They were not in any envelope, just folded up, and I would take them down to the notary. Sometimes they would not be folded. I would carry them back in the same way. One time there were as many as forty of them in one bunch. At other times, maybe two or three, or half dozen. The notaries I took them to were Harry J. Lask, Mr. Thomas S. Burns, Henry P. Tricou, Frank Ford. There might have been one or two or three times that somebody went with me to the notaries to acknowledge these papers, but, as a rule, nobody went with me. The time that I took forty in a bunch, nobody went.

Benson came to Hyde's office occasionally. I carried papers to Benson's office.

"Q. Containing what kind of papers? A. I do not know. There might be a slip of paper that I would get to take over. It might be an envelope, or a letter, or something like that." I would give it to one of the clerks in Benson's office. Don't remember bringing anything back from Benson's office. If there was anything 326 that needed an answer I would wait for it and bring that back.

The office boy at Benson's office would bring papers over to Hyde's office, about as many times as I would go to Benson's office. Don't remember how many trips I made, but very often. It was my work as office boy to do the errands. Could not say that Mr. Hyde direct gave me papers to take either to the notary or to Benson. Saw C. W. Clark quite regularly at Hyde's office, and he would stay quite a length of time. Sometimes he would come twice a day, maybe not for a couple of days, or three or four times a week. He always talked to Hyde in his private office. Never saw M. J. Wright, State Surveyor General, in Mr. Hyde's office.

Dimond came to Hyde's office short time before I left. He had a desk in Hyde's office and moved it out afterwards to an outer office.

## Cross-examination.

By Mr. WORTHINGTON:

I will be 22 years old in May. I don't know that Schneider was doing anything particular about the office when I saw him there. He would just come in and stay around and go out again. As far as I know, he didn't have anything to do with the business of the office. When he did come in there, he mentioned about the ranch in the course of conversation, to anybody in there, just like passing the time of day, almost. Never during the time that I was there did I hear him taking part in the business of the office. So far as I know, I did not see Schneider having anything to do with the office business.

327 Don't remember about Dimond's being there for a while and going to Washington and coming back. I might have left there before he went to Washington. I am not sure. Dimond had a desk just outside Hyde's door, just a few feet from Miss Doyle's desk. There were three or four desks in the office. Don't know whether the desk which was in Hyde's office was put in there because it was too large to get in the outer room. Just supposed it was put in there for Dimond's use. Think he occupied the flat top desk in the outer office, and also had a roll top desk which he used in Mr. Hyde's room. I think Dimond was in the office at the time I left Hyde's employ. Pretty sure. Don't know that the desk was moved out of Mr. Hyde's room at any time while I was there. Most of the time he occupied the desk next to Miss Doyle's. As far as I know, he occupied that all the time. I was only there a little while after Mr. Dimond came. I was a little over thirteen years of age when I first went in Hyde's employ.

When I took these papers to the notary I did not make it my business to look at them. Never went through a whole package that I took to see what they were. I just took a casual glance at the papers. Would look at the top to see what kind of a blank form it was. I could see that from the outside. I could not tell how many papers like the one Mr. Pugh showed me I took to the notaries. Might have been some of them and some others mixed together. There might have been hundreds and hundreds, and I would not have any idea what they were about. I was general office

328 boy, and took messages from Hyde's office to various places about town, doing errands. Remember testifying in this case in New York and San Francisco.

"Q. Do you recall testifying in San Francisco that you did not know what the papers were that Mr. Hyde gave you?

\* \* \* \* \*

"A. I testified in San Francisco. I don't remember whether that question was put to me in that way or not. If they asked me what kind of papers I brought, I gave them the same answer that I gave to the question Mr. Pugh asked a while ago—that I know just by the matter on the blanks. That is all."

When he got papers from Hyde they were usually sealed and returned sealed. Says later, sometimes they would be; depend

on the notary whether they would be or not. Hyde might not have sealed them always, but as far as my recollection goes they were sealed. That is for stuff that was from Mr. Hyde direct, and brought back to him direct. Then, of course, I didn't know what they were, or anything about them.

Cross-examination.

By Mr. CAMPBELL:

Little over 13 when I went in Hyde's employ. Stayed there a year and three months. Close to 15 when I left. A boy 15 when I left Hyde's employ. I was office boy. All I know about the papers which I took to the various people was from what I saw on the back of them.

329

*William F. J. Lahl.*

Direct examination.

By Mr. PUGH:

Have resided in San Francisco for 23 years. Know the defendants, Hyde and Benson. Am not acquainted with the defendants Dimond and Schneider.

I was employed by F. A. Hyde in his office at 415 Montgomery street, as office boy. Others employed there were Miss F. A. Hyde, M. D. Hyde, Walter K. Slack, Herbert Clarke, Mrs. L. E. Farwell, Miss M. L. Doyle, Andrews and myself.

"Q. Do you remember Joost H. Schneider being in the office while you were there? A. I remember his name, but I don't remember the gentleman."

I was employed there about six months during the year 1900. My duties as office boy were in and about the office, getting different papers and taking papers to the notaries, changing money into currency, and attending to mail matters.

I would get papers from different employes of Hyde's to carry to notaries. They were folded papers. Sometimes half a dozen times a day I would go. Sometimes not so many. Sometimes more. I would take them to the different notaries and hand them to them, and they would hand them back to me, and I would return them to the office and give them to whoever gave them to me. The notary would attach his seal and write something on them. Don't  
330 know just what he did write, but he would hand them back to me, and I would give them to whoever gave them to me in the office. I would sometimes take one or two, and sometimes eight or ten at a time, sometimes half a dozen times a day, and sometimes not as many as that. This continued as long as I was in the service.

Thomas Burnes, H. J. Lack, Knox and Tricon were the notaries. I cannot remember, but not that I do remember did anybody go with me before these notaries. I never got any such papers to take to the notaries from Mr. Hyde direct.

I met Mr. Benson just by going from Hyde's office to Benson's

office. Different papers were handed to me by different employes to take over to Benson's office, where I would hand them to Benson's employes, sometimes once or twice a day, and sometimes not at all during the day. This continued as long as I was in the service. Don't remember whether I ever saw Benson in Hyde's office.

Cross-examination.

By Mr. WORTHINGTON:

I was acquainted with all of the people who were in the office while I was there, the ones with whom I worked every day.

"Q. Have you ever seen Mr. Schneider to know him, as far as you can tell now? A. I don't believe I have ever known the gentleman.

331 "Q. Have you seen him since you have been here? A. I have not.

"Q. You don't know whether he is in the court room now, or not? A. I do not.

While this was going on the defendant Schneider was sitting immediately back of the counsel table in full view of the witness.

Couldn't say whether these communications backwards and forwards between Hyde and Benson's offices were between the clerks. I would deliver them to anybody who was there.

So far as I observed, it was not any particular class of papers, but all of the papers that I took to the notaries, that they would attach their seal to and write in whatever they did write—it seemed to be the way the notaries had of doing business there, so far as I could see.

*George G. Brown.*

Direct examination.

By Mr. BAKER:

Clerk of the State Land Board of Oregon and Official Custodian of the State Land Records of Oregon. We have the sale and disposition of school lands. I have custody of the records of the school lands.

Witness was then shown a large number of papers, which he testified were applications to purchase, certificates of sale and assignments of School Lands. I have made out a list of these papers.

332 The list shown me, which is marked "Exhibit 102" is the list. It shows description of the land, section, township, range, area, purchaser, certificate number, date of certificate, Notary Public, date of affidavit, date of deed from State, name of State Grantee, date of assignment, names of witnesses to assignments and Notary Public. This list was made out in the Oregon State Land Office, and I checked it off with the papers you have here.

"Mr. BAKER: In order that these papers may be identified, I want to offer in evidence this list.

"Mr. WORTHINGTON: I have no objection to the list going in for the present. The question about the papers will come later on."

Exhibit 102 is a list showing 143 cases of purported purchases of school lands from the State of Oregon—a half section of 320 acres in area to each purchase.

As to each case the list gives, in separate columns, the description and area of the lands, the name of the purchaser, the certificate number, the date of the certificate, the name of the notary public before whom the affidavit to the application to purchase purported to have been made, the date of the affidavit, the date of the deed from the state, the name of the state grantee, the date of the assignment by the applicant to purchase, the names of the witnesses to the assignment, and the name of the notary public before whom the assignment purported to have been executed.

The affidavits to the applications to purchase, and the assignments by the applicants, in all the cases noted on the list, bear date between August 1, 1898, and January 1, 1899, except three, in which cases the assignments are dated respectively January 17, January 333 26, and January 31, 1899. Most of them are dated in August and September, 1898.

I have been clerk of the State Land Board since the first of April, 1903. I was appointed a clerk in the office on August 1st, or assumed my duties on August 1st, 1895. I have been in the office continuously since. The office is in Salem, Oregon. These papers I have here were taken out of that office. The system of filing is a little different now than it was at that time. When these papers were filed, the law required an application to purchase to be filed together with one-third of the purchase price, which was \$1.25 an acre, and two notes for the deferred payments, payable in one and two years, with interest at ten per cent. The price was \$1.25 an acre, one-third to be paid in cash, and two notes for the balance, each for the same amount, made by the person who signed the application. In case a cash payment was made, a deed was issued at once, and no certificate was issued. I think there is one cash payment among these papers. It is the Andrew Anderson case. There is no number to the certificate of sale when it is a cash payment. In a cash sale, when an application for purchase was filed, the entire amount, \$1.25 an acre, was all that accompanied the application, in case a cash deed was desired. In the other case where the cash was not paid, one third of the purchase price, together with two notes, due in one and two years with interest at ten per cent would accompany the application.

The notes were filed in a note case in the office, and when the full payment was made and deed was executed, they were re- 334 turned to the state's grantee. The interest was paid on the notes up to the time the deed was issued. At any time after the note was issued, only these certificates and the notes would be surrendered at the time the deeds were issued. In one sense of the word, the certificates were surrendered and the deeds were issued to the assignee of the certificates, or the certificate holders, as the case might be, and at that time the notes were surrendered, at the time the deeds were issued.

The records would show the assignees. After a certificate was



issued the law provided that an assignment of a certificate of sale could be made in the same manner that a deed for real estate was issued, and the law also provided that the certificate of sale must be surrendered, or its absence accounted for when the deed was issued, and in case there was an assignment attached to a certificate of sale when it was surrendered to the office, the deed issued to the assignee of the certificate, whether there was one or half a dozen—to the last assignee; and that is why we would have these papers in our possession.

In case the deed- were not issued to the original applicants these papers would show the assignees. It also shows the dates when the deeds were issued—that is specified on the outside of the application.

There is nothing in this list here (referring to exhibit 102—that is not on one of these papers.

As soon as the application was received in the office and one third of the purchase price paid, and the notes given for the deferred payments, the certificates are issued. Sometimes it might have  
335 been a day or two after it was received, according to the amount of accumulated business in the office. We tried to issue them as rapidly as possible, and as a rule when they were received in the office; but that was not always the case. It depended upon the amount of accumulated business.

In our office, at that time, the assignment could not be filed before the notes were given. The office knew nothing of the assignments of the certificate, as a matter of fact, until the certificate was surrendered. There was no law providing for the filing of assignments in the office until the certificate was surrendered and deed requested. And the certificate could not be issued until the one third was paid in cash and the two notes given.

#### Cross-examination.

By Mr. WORTHINGTON:

There was no limit to the amount of land, deed to which could be issued to any one person by assignment. The law provided that one person could only purchase 320 acres; but so far as assignments were concerned there was no limit to the amount that could be conveyed by assignment by the state. There was no reason, so far as the laws were concerned, as we construed them in practice, why Mr. Hyde for instance, could not have gotten titles open and above-board, on our records, to forty or fifty thousand acres of land by assignments. We did not issue a certificate of purchase until the one-third cash payment was made. The one-third payment had to  
336 accompany the application. The applications were not considered in legal form until the one-third purchase price accompanied them. When the applicant filed his application in proper form and paid his one-third, he was entitled immediately to the certificate of purchase. It was customary to issue certificates as soon after the applications were received at the office and the money accompanying the notes, as was possible. Sometimes there

was an accumulation of business that prevented them issuing on the day they were received; but it was only a matter of a few days.

It would relate back to the time of the filing of the application and the proportion of the purchase money. There was no practice or regulation, that I knew of, which prevented an assignment from being made the next day after a certificate of purchase was obtained. The law provided that assignments should be made in the same manner as a deed to real estate; and if they were executed the next day I do not know that there was any reason for their not being accepted by the office. In all the cases on this list, I think the deed covering the land was made either in the year 1898 or 1899. That is correct—(After running down the list) and a deed of course would not issue until the State had received its full \$1.25 an acre. So that in all these cases the State of Oregon, nine or ten years ago, received the full value of the land, provided by law, and made an absolute deed of it to somebody. These papers all relate to school lands in the State of Oregon. Could not state whether they all relate to school lands in forest reserves. I think there is no way to determine whether they all relate to school lands in forest reserves, from the papers we have. That would probably have to be proven by  
 337 the government attorneys. I think there is nothing here to indicate whether they were in forest reserves or not. They would have to be taken from a map of the Cascade Forest Reserves, and each tract checked on it.

The papers specify the township and range in which the land — located, and that, of course, could be traced on the map. You could go to a forest reserve map and find out where they were.

Redirect examination.

By Mr. BAKER:

Immediately after the one-third cash was received, together with the notes, certificates of purchase was issued.

Recalled for further recross-examination.

By Mr. CAMPBELL:

I have been connected with the Land Department of Oregon since 1895. No suit has been brought by the State of Oregon to cancel any of the titles to lands included in those reserves.

"Mr. WORTHINGTON: So far as Mr. Hyde is concerned, as to all the papers on that list (Exhibit 102), we admit that they were all his cases."

*Thomas McCusker.*

Direct examination.

By Mr. BAKER:

338 I have resided at Portland, Oregon, for over 19 years; am in the real estate business at present; in 1898, 1899 and 1900 I was Contracting Freight Agent for the Southern Pacific Railroad Company, with my headquarters at Portland. I know the defendant

Schneider, having met him along about the 1st of August, 1898, at the store of Wiley B. Allen, in Portland. He was in the piano business.

"Q. Will you just state the circumstances under which you met Mr. Schneider?"

Counsel for the defendants then objected to the evidence sought to be obtained from this witness, first, in so far as it would relate to any act on the part of Schneider which occurred prior to three years before the finding of the indictment, and secondly, because if it was proposed to show by this witness, and by others, that in 1898 Schneider went to Oregon and obtained school lands from the state of Oregon by irregular and fraudulent methods, the evidence would be inadmissible unless it were further shown that Hyde had knowledge of what was done in Oregon by Schneider, and of the manner in which it was done; or that either of the other defendants had such knowledge.

"Mr. BAKER: We propose to connect Mr. Hyde up with every transaction in this matter.

"Mr. WORTHINGTON: Of course he will be connected up with it. There is no question made but that the title to these lands in Oregon, which were obtained through Mr. Schneider's efforts in 1898 and 1899, went very largely to Mr. Hyde. Perhaps all of them he had gotten control of, or has something to do with in one way or another.

There is no question about that. The District Attorney need  
339 not bother about connecting up Mr. Hyde, because it is an admitted fact that Mr. Hyde sent Mr. Schneider there for the purpose of acquiring the school lands. Now, what I ask is, does the District Attorney expect to show that Mr. Hyde knew of these alleged irregularities, or that any of the defendants did? If he does not, then I object to it on the ground that it could not be of any possible pertinency in this case. Further it has appeared in the evidence so far that Mr. Schneider's connection with Mr. Hyde's office in any way, or with his business, ceased more than three years before this indictment was found. I do not care to raise that question for discussion at this time."

Counsel for the Government then stated that the Government's evidence as a whole would show that Schneider went to Oregon as Hyde's agent; that Hyde was engaged in the same business in California; that he had knowledge of all of these transactions, and knew of the fraud on the part of Schneider. We propose to show from all the circumstances that Hyde knew all that Schneider did while in Oregon.

"The COURT: I will receive the evidence and will note an exception, overruling the objections stated.

Mr. WORTHINGTON: And your Honor will reserve the question of whether the Government's evidence does sufficiently connect up until the conclusion of the Government's case?

"The COURT: Of course I make the ruling upon the statement of counsel that their evidence as a whole will show that Hyde was  
responsible for the manner in which these titles were obtained.

340 If he is not, he of course would not be liable for it.

"Mr. BIRNEY: That applies equally to all of us?"

"The COURT: As to all."

(Witness resuming:)

When I met Schneider in Mr. Allen's office Mr. Allen said to Schneider, "Here is just the man you want; Mac knows everybody," and introduced me, saying that Schneider came with a letter from his, Allen's, friend Sherman of San Francisco.

Then Schneider stated his business to Allen, that he was looking for those who had not taken their School rights, as he wanted to purchase the School rights, for which he would pay five dollars, and being a stranger wanted some one to assist him in the matter, saying he would pay \$5 for the trouble. Allen said he would just as leave do it for nothing as for \$5, if it was a business proposition; and he said, if it is worth anything it is worth \$50. Schneider said he was only allowed \$20 or \$25 for each transaction. They compromised on \$10, which Schneider was to pay to Allen and myself for those who would dispose of their school rights, who would make the application for the school lands and assign the right to purchase. It was duly agreed that Schneider should pay \$10 to Mr. Allen and myself on each transaction. I then took Schneider to one of the Portland banks and introduced him to the receiving teller, as he said he wanted to keep a deposit in the bank there. On the way to the bank Schneider handed me a card.

This card was offered in evidence by the Government, and is as follows:

341

"EXHIBIT 103.

"J. H. Schneider,

Vice-President and General Manager Orestimba Land Company;  
Orestimba Ranch, Gilroy, Santa Clara Co.; Oak Flat Ranch,  
Crow's Landing, Stanislaus Co.; The Hyde Ranch, Cornwall,  
Contra Costa Co.; Office, 630 Commercial Street, San Francisco."

In answer to a question by the Court it was admitted that Santa Clara County, Stanislaus County, and Contra Costa County were all three in California.

After this, Schneider furnished me with blank applications—either blank or filled out. If they were not filled out, he furnished me with a description to fill in there. I got a number of folks to sign these applications, telling them that if they were not going to use their school rights, a man in California would pay \$5 for it. The applications I never read myself, nor did any of the people who signed them. They signed an application for the school lands and did not sign anything else at that time. They were told they would have to sign an assignment, and I think that in some of the cases they signed possibly an assignment at the same time. I believe, in some instances, they were both signed at the same time, and in some instances they were possibly a day or two apart.

Schneider gave me a blank application to apply for a half section of school land, and in some of the cases the description was filled in

that he gave me, and I had the applicant sign; Schneider  
342 knew it because he gave me the money at the time. He gave  
me \$5, I believe, or \$6—possibly the notary fee—\$5, anyway,  
and possibly the notary fee making \$6. He gave me then the as-  
signment, assigning the same lands to Flora Sherman and J. H.  
Schneider, and to some others. I cannot recollect who. I think the  
money was given me at the time he gave me the assignment blanks,  
but I did not pay the money to the applicants until they had filled out  
the assignment. I was assisted in this work by Mr. Jake Bloch, and  
G. J. Hartman, Junior; but I turned them all over to Schneider and  
got the money from him to pay the applicants. Mr. Allen is dead.  
None of the people that I received applications from signed any  
note, nor was any money paid by them to make the one-third  
payment.

At this point the counsel for the Government were asked by the  
counsel for the defendant Benson whether the Government expected  
to connect this testimony with the deeds from the State of Oregon—  
that is, to show that these transactions culminated in the deeds that  
entered into a part of this alleged transaction. The District Attorney  
replied, "Oh yes; we will connect it up."

Thereupon counsel for the defendant Benson objected to the fore-  
going evidence as incompetent and irrelevant with relation to the  
people who made the applications, and who were not fictitious but  
were real persons, upon the grounds that the Land Board of the State  
of Oregon passes upon qualifications of a purchaser, and where it  
issues its patents in the shape of a deed, then all questions as to the  
rights of a person to purchase, if he be a real person, are  
343 passed upon; that the Decisions of the Board are final and  
conclusive between every person except the State of Oregon,  
and cannot be attacked in a collateral matter; that this objection  
excluded all irregularities in obtaining school lands, in forest re-  
serves, from the State of Oregon, except those in which there was no  
applicant at all, and the name of a fictitious person was used—but  
that the question as to whether or not a person wanted to purchase  
lands for his own benefit, and other similar questions, were con-  
cluded by the decision of the Board; and that this was so by the laws  
of Oregon and by the laws of California.

Counsel for the defendant Hyde joined in the objection on the  
ground that all such questions which lie behind the deed from the  
State are concluded by the decision of the Board of Commissioners.

The Court noted the objection and reserved to a subsequent period  
in the trial the decision of the questions of law raised by the ob-  
jection.

The witness was then shown thirty-one of the records of the pur-  
chases of Oregon School Lands, which were produced by the witness  
George G. Brown, and testified that he or the persons who assisted  
him, as stated, secured the persons named to make the applications  
and the assignments, by paying to them, respectively, the sum of  
\$5, which he got from Schneider, for their school land rights, in  
accordance with the methods and manner described in his testi-  
mony already stated. None of the applicants so secured paid any

money for the lands at all. The numbers of the cases, the names of the applicants, and the lands applied for were stated by the witness. Thirteen of said cases embrace school lands described in whole or in part in Counts 1, 9, 13, 15, 16, 22 and 24 of the indictment, as stated in the testimony of the witness John McPhaul hereinafter given. The remaining eighteen cases embrace School Lands, described in List B of the bill of particulars.

No. 8653; Applicant, Mrs. E. A. Aiken: Land purchased, E.  $\frac{1}{2}$  of Sec. 16, Tp. 19 S., R. 7 E., 320 acres, Crook Co. The record of this purchase was introduced in evidence as relating to land described in the first count of the indictment. The record is as follows:

*Application to Purchase.*

To the Board of Commissioners for the Sale of School, University, and State Lands for the State of Oregon:

I hereby apply to purchase the following described school lands, situated in Crook County, Oregon, to wit:

East half of section 16, all in Township 19 S., Range 7 E., containing 320 acres, and I agree to pay for the same according to law.

MRS. E. A. AIKEN.

*(Signature of Applicant.)*

This 16 day of August, A. D. 1898.

345 STATE OF OREGON,

*County of Multnomah, ss:*

I, Mrs. E. A. Aiken, being first duly sworn, say that I am over eighteen years of age; that I am a citizen of the United States; that I am a resident of this state; that I have not directly or indirectly made any previous purchase of land from this State, or has any one for me, which, together with the land described in the above application, exceeds three hundred and twenty acres; that the proposed purchase is for my own benefit, and not for the purpose of speculation; that I have made no contract or agreement, express or implied, for the sale or disposition of the land applied for in case I am permitted to purchase the same; and that there is no valid adverse claim thereto, by any actual settler.

[SEAL.]

MRS. E. A. AIKEN.

*(Signature of Applicant.)*

Subscribed and sworn to before me this 16th day of August, 1898.

CHARLES E. BENNETT,

*Notary Public for Oregon.*

*Memoranda.*

The foregoing affidavit should be made before a Notary Public or County Clerk.

No appraisal is necessary, as the acts approved February 21, 1887, and February 19, 1895, require that all School and University lands be sold at the uniform price of \$1.25 per acre, Agricultural College, and Indemnity School Lands at \$2.50 per acre.

Payment on any lands except Tide, Swamp, and Timber lands may be made as follows: One third of the purchase price down, balance in two equal notes, payable in one and two years, with interest at 10 per cent per annum, payable semi-annually, or full payment may be made at the time of purchase, and deed will issue at once.

On timber lands, one half must be paid down, balance in one note, payable in one year, with interest at 10 per cent, etc., but the purchaser is not permitted to remove any timber until full payment is made.

For Tide lands, a special application is prepared, which will be sent you on application.

Lands heretofore sold by certificate of purchase and lapsed to the State cannot be sold for less than the original purchase price.

(Endorsed on back:) Mrs. E. A. Aiken. Application to purchase School Lands, T. 19 S., R. 7 E. Certificate of Sale No. 8653. Issued Aug. 20<sup>th</sup>, 1898. Deed executed May 1, 1899. State Record of Deeds, Vol. 4, p. 223. Filed Aug. 20<sup>th</sup>, 1898. H. H. Odell, Clerk of Board. G.

347 Mr. BAKER: We offer in evidence also the certificate of sale accompanying those papers, and the assignment, so that we will have all that are in the jacket.

(Mr. Pugh thereupon read to the jury the certificate of sale, and assignment, in case 8653, and the same are in the words and figures following, to wit:)

*Certificate of Sale 8653.*

STATE OF OREGON.

*Land Department:*

This is to certify, That the Board of Commissioners for the Sale of School and University Lands, and for the Investment of the Funds Arising Therefrom, have this day sold to Mrs. E. A. Aiken the following described School Lands, situate in Crook County, Oregon, to wit: The E<sup>2</sup> of Sec. 16, T. 19, S. R. 7 E. of W. M., containing 320 acres, for the sum of 400.00 dollars, in Gold Coin, payable as follows: 132.00 Dollars down, the receipt whereof is hereby acknowledged, and the remainder in two equal payments, according to the tenor of two notes given by her of date Aug. 16, 1898, each for the sum of 134.00 Dollars, payable in one and two years with interest at the rate of ten per cent, per annum.

Now, when said notes are paid, both principal and interest, as therein expressed, then the said Mrs. E. A. Aiken, *his* heirs and assigns, shall be entitled to a deed of conveyance to the land above described, but in case any interest on said notes shall remain unpaid for one year after the same becomes due, then this sale and certificate shall be void, and all payments made thereon shall be forfeited, and the land shall be deemed vacant, and shall be subject to sale as if it had not before been sold.

348

By order of the said Board of Commissioners.

Witness the seal affixed this 20<sup>th</sup> day of August, 1898.

[SEAL.]

W. H. ODELL,  
Clerk of the Board.  
G.

### *Memoranda.*

At least one year's interest must be paid on all land notes.

In all correspondence relating to certificates of sale, or in sending in payments on notes, always give the number of the certificate of sale.

This certificate shall be returned to this office when the above-mentioned notes are paid, as deed will not be issued until it is so returned, or its absence accounted for.

All assignments of certificates of sale shall be executed and acknowledged in the same manner as a deed to real estate; and the assignee, upon full payment of the amount due on the purchase price and delivery to the Board such certificate and assignment, shall receive a deed for the lands described in such certificate in his own name, as if he were the original purchaser.

Your attention is especially called to the provisions of section 13. of the Act of October 18, 1878, which is as follows:

"If any interest should remain unpaid on any note or notes, given for part of the purchase price of lands, for one year after the same becomes due, the sale and certificate shall be void, and all payments thereon shall be forfeited, and the land shall be deemed vacant, and shall be subject to sale as if it had not before been sold."

This law will be strictly enforced, and if you permit the interest on your notes mentioned in this certificate to remain unpaid for one year after it becomes due, this sale and certificate will be canceled and the land again offered for sale. It is not the duty of this office to give you any notice of your delinquency in this matter, but it is your duty to keep yourself informed of the condition of your notes and to pay the interest when due.

(Stamp:)

10      10  
Ten cents.

(Stamp.)      United  
States

Inter.  
Revenue.

Series of 1898.  
Documentary.  
Cancelled  
Aug. 20, 1898.  
W. H. Odell.

Know all men by these presents, That I, Mrs. E. A. Aiken, and Edward L. Aiken her husband, for a valuable consideration have sold, assigned, transferred and delivered to H. S. Morris certificate of sale, No. 8653, issued by the Board of School Land Commissioners of the State of Oregon, and have bargained and sold and by these presents do grant, bargain, sell and convey unto the said H. S. Morris all of my right, title and interest in and to the lands therein de-



scribed, situate in the County of Crook, State of Oregon, to  
350 wit:

The east half of Section sixteen (16) Township Nineteen (19) South of Range Seven (7) East of Willamette Meridian, containing three hundred and twenty (320) acres of land.

To have and to hold the same with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, unto the said H. S. Morris, his heirs and assigns forever. And we the said Mrs. E. A. Aiken and Edward L. Aiken do hereby authorize the said Board, upon payment of the balance due on the purchase price of said lands, to execute a deed to H. S. Morris, his heirs and assigns, for said lands. And the said — undertakes and agrees to pay the notes given for the purchase price of said lands.

In witness whereof we have hereunto set our hands and seals this 24 day of August, A. D. 1898.

MRS. E. A. AIKEN. [SEAL.]  
EDWARD L. AIKEN. [SEAL.]

Executed in the presence of  
CHAS. E. BENNETT.  
THOS. McCUSKER.

(Stamp.) 50 Fifty cents 50  
United Inter.  
States Revenue.  
Series of 1898  
Documentary.

STATE OF OREGON,

*County of Multnomah, ss.:*

This certifies that on this 24 day of August, 1898, before me, the undersigned, notary public, in and for the County and State  
351 aforesaid, personally appeared the within named Mrs. E. A. Aiken and Edward L. Aiken, to me known to be the individual- described in and who executed the foregoing conveyance, and acknowledged to me that *he* executed said conveyance.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

CHARLES E. BENNETT,

[SEAL.]

*Notary Public for Oregon.*

(Mr. Pugh thereupon read aloud the words and figures appearing upon the face of the envelope containing the foregoing papers in case 8653, as follows:)

8653

223

Mrs. E. A. Aiken  
Application to Purchase  
School Lands

T. 19 S., R. 7 E.

Certificate of Sale No. 8653

Issued Aug. 20", 1898.

Deed Executed May 1, 1899.

State Record of Deeds, Vol. 4, page 223.

Filed Aug. 20", 1898.

352 For each of the foregoing applicants I was paid \$10 by Schneider. Each applicant was paid \$5. The records were all introduced in evidence.

In the spring of 1903, a young man by the name of Laveson called on me. He had some papers he wanted me to sign. I did not read them, and don't know what they were. He said they were to show that this land was taken up on open and free sale, without solicitation from the parties. He said that there was some trouble about it, and the land had got into the hands of innocent third parties, and he wanted me to make a statement to that effect.

I recognize Mr. Laveson in court, sitting by Benson. He came to see me twice. I had seen in the paper something about this land being fraudulently obtained, and for what purpose. That is the first I realized that I had gotten mixed up in to the land fraud business. I told him that I had got mixed in it enough, and I didn't get into it any more; that if the Government wanted any information from me they would get it; that I had my doubts about the innocent third parties. He insisted on my signing these papers. I told him no, I would not do it. I finally said I would consult my attorney. I did consult with my attorney, and asked him some questions in regard to it.

Then I told Laveson that I would not sign anything. I simply said I saw by the papers that it was a land fraud deal, and I would not shield any one in it, and if the Government wanted any information they could get it from me.

353 He didn't say who he represented. I couldn't say he had a list of names. He had some papers. I didn't look at them.

Had no conversation with him as to how these applications were obtained. When these assignments were given me by Schneider, I don't know whether they were dated. My impression is they were dated. It is possible they were filled in.

#### Cross-examination.

By Mr. WORTHINGTON:

Referring to application 8362 in name of Edward L. Aiken. Aiken lived in Portland. Was in charge of the draymen for the transfer company. Was a man of standing and intelligence.

The witnesses were Bennett and myself. Bennett was a notary public and a real estate man. Bennett is dead. Took Aiken to Bennett's office. The papers were not read. When we went there, we had a general understanding that he was to sign an application and the assignment. Don't think he understood what school rights meant, any more than I did. I thought we all had a right to purchase these lands, and if we did not want them we could dispose of them. That was all the information we had about it.

Schneider told me that each citizen of Oregon had a right to file an application and claim title to 320 acres of State lands, by paying \$1.25 per acre for it. I did not know it until he told me, and that was a fact. When I met Schneider in Allen's store, it was agreed that I should get as many of these applicants as I could. I

354 was to get ten dollars for every one I brought in. I was to offer five dollars to each applicant. It was pursuant to this arrangement that I saw Edward L. Aiken. When I spoke to Aiken, I asked him if he had used his school right, and he said no. I told him there was a man here from San Francisco who wanted to purchase those school rights and would pay five dollars for them. I believe I repeated to him in substance what Schneider told me, that each citizen of Oregon had a right to purchase these school lands. Each applicant knew this before he signed his application and assignment. I suppose we received somewhere about 25 or 30 of these printed application blanks from Mr. Schneider. Received them during about a month, and I am quite clear that I never read any of them. Did not read the one that I signed or the one that my wife signed. I did not think it was necessary, and did not pay any attention to them. I assumed I had the right to make the application and assign it and my wife and I executed the assignment and swore that the statements contained therein were true. I did know in a way, or perhaps I did not know what I was swearing to.

"Q. I do not know just how you could know and could not know. A. Of course, I know what you are trying to get at, and I know what I understood.

"Q. What I am trying to get at is the truth. A. No; you are trying to get at the fact that I had knowledge that I was perjuring myself. That is what you are trying to get at, and I am trying to tell you that I did not know that I was doing anything of the kind.

Now, that is plain."

355 I did swear to the statement before the notary, and I knew the paper was going to the State Land Office, and I swore to whatever might be in it without knowing what it was, and had my wife do the same thing. I took a large number of other people to the office of this and other notaries, and had them do the same thing, and was paid ten dollars each time I did it. I have never been prosecuted, either by the State of Oregon or by the United States.

When Mr. Lavinson came to me, he said he represented an innocent third party. I told him I would not give him any information or sign any more papers, but whenever the Government wanted any information they could get it. I gave information to a Government officer.

Sometime afterward, Mr. Burns called on me. He said he represented the Government. I said he would have to show me that he did; that others had been asking me questions. I went to the hotel with him. Judge Pugh was present, and I gave him the information. I believe it was in the fall of 1903. My statement was taken down, and written out, and I then read it, signed it and swore to it. Burns said nothing to me about whether I would be prosecuted or not. Never had any communication with any Government officer on that point.

"Q. You have always considered that what you did was entirely innocent? A. At that time, when he wanted me to answer him at my house, I told him no. He said "We can take you to Washing-

1011." I said "The Government can take me anywhere, but you have got to show me it is the Government."

356 R. P. Sibley, the applicant in S634, is a clerk in the Southern Pacific office. The witnesses on this application was S. B. Riggon and E. J. Haigh. I know them both. Clara A. Sibley, S635, I know only from Mr. Sibley's statement that she was his wife. I knew him.

Application S649, Sophia Block.

Mr. BAKER: I might state that as to all of these people we do not claim that any of them are fictitious persons.

I knew R. I. Eckerson, the witness in this case. He is a broker in Portland.

In all cases where my signature does not appear as a witness, I was not present before the notary, and don't know what took place. In all cases where my name does appear as a witness, I went with the party before the notary, and saw that the notary administered the oath and the party took it. I did this without knowing what was in the papers. Mr. Schneider was not present at any of them.

I never told Mr. Schneider when I delivered the papers to him that the parties did not know what they were signing. Applications were handed by me to Schneider at different times. I did not get my money until after I signed an application myself. I turned a lot of the applications over to Schneider without receiving anything from him. He gave me the five dollars to give to the applicant. When I appeared before the notary, he filled up the part for him to fill up and the dates, etc., and the time. In this case, the application seems to have been sworn to on the 16th of August, and filed  
357 in the State Land Office on the 22nd. The jurat on the assignment is dated 24th of August. The date is in the handwriting of the notary Bennett, so that the assignment was not executed until after the application had been executed and filed in the State Land Office. That looks so. I should say it was. They were not executed at the same time. I could not say that the application and the assignment were signed at the same time. I said it was my best recollection, but I could not say as to that one. I have a recollection that some of them were signed at the same time. Where I was not present and my name does not appear as a witness, I could not tell in those cases whether the assignments and applications were executed on the dates they bear, while I was there, the ones with whom I worked every day.

Witness was asked if he swore to the statements in the said application signed by himself, and he answered that he did.

"Q. And you swore to whatever might have been in it, without knowing what was in it? A. Yes, sir.

"Q. And you had your wife do the same thing? A. Yes, sir.

"Q. And you took a large number of other people to the office of this and other notaries, and had them do the same thing? A. Yes, sir.

"Q. And you were paid \$10 for each time you did it? A. I was paid \$10 for the application; yes.

358 "Q. And you have never been prosecuted; have you? A. No, sir."

Redirect examination.

By Mr. BAKER:

Salem is 52 miles from Portland. Don't know, but I was under the impression Schneider remained in Portland about thirty days. I delivered the assignments to him personally. I gave the applications of myself and wife for school lands before I sold them to him.

*Don Alexander.*

Direct examination.

By Mr. BAKER:

Have resided in Portland for about twenty-five years. I was a notary public there in 1898; also searcher of records, making abstracts of title in Multnomah County. Have not been a notary since January, 1901. In 1898, my office was where it is now, at 10 Morrison Street, Portland.

Don't know Schneider personally, but have seen him. First saw him one day in August or September, 1898. I was sitting in my office one morning, and a man walked in and said he was a stranger in town. At the moment, he did not tell me his name, but told me before he went out.

359 "Q. Tell me in your own way about the first meeting. A. He said he was walking through the city, and was a stranger from California, San Francisco, and saw the sign on the door and thought he would take the liberty of coming in and talking with me a little bit if I had no objection. I said not, that I was glad to see a stranger at any time. I gave him a seat. He sat there, Oh, I guess he stayed an hour or more with me talking. He smoked a cigar and talked about various matters, about the city and so on. About the time he was getting ready to go he said, 'I believe you are a notary public, are you not?' I said, 'Yes, I am a notary public.' 'Well,' then he said, 'I have got a paper here. I guess maybe you could fix it for me, verify it for me.' I said I could. He produced the paper, and it was a—I don't know—a land paper; two papers. One was proof of filing on land, I think it is, and the other paper was an assignment of the matter from the one who filed it to someone else. Well, I asked him where the parties were. He had others, some papers there at the time. I said they ought to be there and appear before me. Well, he said he had not intended to come for that, and that he was in a hurry and wanted to get away, and it was a matter of form and so on, and he would have them drop in afterwards and see me. Well, it ended in my fixing the paper as a notary, signing it and sealing it, and delivering it. There was more than one paper. I forget how many he had. It was a good while ago; but there was a number of the same kind of papers, all of them. I signed them and verified them as notary."

He came a couple of times, maybe as many as three times; not more than that, I think. During the first conversation he gave me his name as Schneider. He was a German—a dignified-looking man, of pleasant manners. I supposed was a man of some importance. Think he wore a moustache; could not be positive. Could not say how soon after his first visit he came again. The thing is all pretty vague. It has not been called to my attention for a long time, and I have forgotten. Really don't remember what happened when he came back—just about the same kind of business, though. Had some papers verified in relation to State lands in Oregon. They were papers I was entirely unfamiliar with. One was an application for filing on land, and the other a deed assigning the land to some third party. The applications and the assignments all came together. Schneider was the only one that brought any. Never got them from anyone else. They sometimes came by mail. He said the parties would come in and verify their acknowledgments. None of them ever came. I was paid just the usual notarial fee. As far as I can recollect, some of them had the descriptions in, and perhaps some did not even have that. Yes, I guess they all had descriptions, but I am not sure; I can't say. After this long time I can hardly tell.

The deeds of assignment did not have the names of the grantees in. I rather think they were not dated when I acknowledged them. Schneider did not witness any of them. I asked him to do it, I remember now. He had one there with one witness on, and he wanted me to sign as a witness too, and I said, "Well, you have seen these people; you know them; you have seen them sign?" He said, "Oh, yes; every one of them." "Well, then," says I, "you had better just sign as a witness." "Well," says he, "the only matter about that is that some of these lands I will probably take the assignment on in my own name, and it wouldn't do for me to be a witness on my own transaction." That seemed kind of plausible, so I witnessed it.

The witness was then shown twenty-seven of the records of the purchases of school lands from the State of Oregon, being some of the same records produced by the witness George G. Brown from the State Land Office of Oregon; and he testified that those were the cases in which he had affixed his notarial signature and seal to both the application and the assignment in each case; and that in no case had the parties appeared before him to swear to the application or to acknowledge the assignment, and he did not know any of the parties; and that the given dates in the jurats and the certificates of acknowledgment were not in his handwriting; and that all of the applications and assignments were brought to him by Schneider.

Eight of the said records embrace school lands described in whole or in part in counts 2, 3, 4, 14, 15, and 23 of the indictment, as stated in the testimony of the witness John McPhaul, hereinafter given. The remaining nineteen cases embrace school lands described in List B of the bill of particulars. Among the names of the applicants were D. O. Fulton and E. C. Douglass, referred to

in the testimony of the witness J. F. Shearman, hereinafter given, all of which records were offered in evidence.

The papers in all the cases so identified by the witness were  
362 read in evidence to the jury by counsel for the Government.

The first case in which the papers were shown to the witness was application 8565, M. M. Long, and in that case the papers were as follows:

“(L.—2.)

*Application to Purchase.*

“To the Board of Commissioners for the Sale of School, University, and State Lands for the State of Oregon:

“I hereby apply to purchase the following described school lands, situated in Jackson County, Oregon, to-wit:

“E.  $\frac{1}{2}$  of Section 36.

“All in Township 35 S., Range 4 E., containing 320 acres, and I agree to pay for the same according to law.

“M. M. LONG,  
(Signature of Applicant.)

“This 1st day of Aug., A. D. 1898.

“STATE OF OREGON.

*County of Multnomah, ss:*

“I, M. M. Long, being first duly sworn, say that I am over eighteen years of age; that I — citizen of the United States; that I am a resident of this State; that I have not directly or indirectly made any previous purchase of land from this State, or has any one for me, which, together with the land described in the above  
363 application, exceeds three hundred and twenty acres; that the proposed purchase is for my own benefit, and not for the purpose of speculation; that I have made no contract or agreement, express or implied, for the sale or disposition of the land applied for in case I am permitted to purchase the same, and that there is no valid adverse claim thereto by any actual settler.

“M. M. LONG,  
(Signature of Applicant.)

“Subscribed and sworn to before me this 2d day of August, 1898.

D. ALEXANDER,  
Notary Public for Oregon.

[Seal: D. Alexander, Notary Public, State of Oregon.]

*Memoranda.*

“The foregoing affidavit should be made before a Notary Public or County Clerk.

“No appraisement is necessary, as the acts approved February 21, 1887, and February 19, 1895, required that all School and University lands be sold at the uniform price of \$1.25 per acre, Agricultural College, and Indemnity School Lands at \$2.50 per acre.

"Payment on any lands except Tide, Swamp, and Timber lands may be made as follows: One third of the purchase price down, balance in two equal notes, payable in one and two years, with interest at 10% per annum, payable semi-annually, or full payment may be made at the time of purchase, and deed will issue at once.

"On timber lands, one half must be paid down, balance in one note, payable in one year, with interest at 10%, etc., but the purchaser is not permitted to remove any timber until full payment is made.

"For Tide Lands, a special application is prepared, which will be sent you on application.

"Lands heretofore sold by certificate of purchase and lapsed to the State cannot be sold for less than the original purchase price."

(Endorsed on Back as follows:) "M. M. Long. Application to purchase School Lands, T 35 S, R 4 E. Certificate of Sale No. 8565. Issued Aug. 4, 1898. Deed Executed May 19, 1899. State Record of Deeds, Vol. 4, p. 244. Filed Aug. 4, 1898. W. H. Odell, Clerk of Board."

"No. 127 Warranty Deed.—For sale by Statesman Job Office, Salem.

"This indenture witnesseth, That I, M. M. Long, (unnarr-  
ried) for the consideration of the sum of Two Hundred and Fifty (\$250.00) Dollars to me paid, have bargained and sold, and by these presents do bargain, sell and convey unto A. S. Baldwin the following described premises, to wit: The East half of Section Thirty-six (36) in Township Thirty-five (35) South, Range Four (4) East of Willamette Meridian, containing Three Hundred and Twenty (320) acres.

"To have and to hold the said premises, with their appurtenances, unto the said A. S. Baldwin his heirs and assigns forever.

And the said M. M. Long does hereby covenant to and with the said A. S. Baldwin his heirs and assigns, that he is the owner in fee simple of said premises; that they are free from all encumbrances, and that he will warrant and defend the same from all lawful claims whatsoever.

In witness whereof, I have hereunto set my hand and seal this 29th day of October A. D. 1898.

M. M. LONG. [SEAL.]

Done in the presence of  
D. ALEXANDER,  
C. J. MARTIN.

(Internal Revenue Stamp Denomination of Fifty Cents.)

"STATE OF OREGON,

County of Multnomah, ss:

"On this, the 29th day of October A. D. 1898 personally came before me, a Notary Public in and for said County and State, the within named M. M. Long to me personally known to be the identical person described in, and who executed the within



instrument, and who personally acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein named, and without fear or compulsion from any one.

Witness my hand this 29th day of October, A. D., 1898.

D. ALEXANDER,  
*Notary Public for Oregon.*

[Seal: D. Alexander, Notary Public, State of Oregon.]”

(Endorsed on back as follows:) “Warranty Deed. From —  
To —.

STATE OF OREGON,  
*County of —, ss:*

“I certify that the within was received and duly recorded by me in — County Records, Book of Deeds, Vol. Page — on the — day of —, 189—.

County —.

By — —, *Deputy.*

Filed — —, 189—.

At — o'clock, — M.

County —,  
By — —, *Deputy.”*

367 “(L.—5.)

*“Certificate of Sale 8565.*

“STATE OF OREGON,  
*Land Department:*

This is to certify, That the Board of Commissioners for the Sale of School and University Lands, and for the Investment of the Funds Arising Therefrom, have this day sold to M. M. Long the following described School Lands, situate in Jackson County, Oregon, to wit:

The E-2 of Sec. 36 T. 35 S. R. 4 E. of W. 172, containing 320 acres.

“For the sum of 400.00 dollars, in Gold Coin, payable as follows: 132.00 Dollars down, the receipt whereof is hereby acknowledged, and the remainder in two equal payments, according to the tenor of two notes given by him of date Aug. 1, 1898, each for the sum of 134.00 Dollars, payable in one and two years with interest at the rate of ten per cent. per annum.

Now, when said notes are paid, both principal and interest, as therein expressed, then the said M. M. Long, his heirs and assigns, shall be entitled to a deed of conveyance to the land above described; but in case any interest on said notes shall remain unpaid for one year after the same becomes due, then this sale and certificate shall be void, and all payments made thereon shall be forfeited, and the land shall be deemed to be vacant, and shall be subject to sale as if it had not before been sold.

By order of the said Board of Commissioners.

368 Witness the seal affixed this 4<sup>th</sup> day of August, 1898.

[Seal State of Oregon Land Department.]

W. H. ODELL,  
*Clerk of the Board.*

*Memoranda.*

"At least one year's interest must be paid on all land notes.

"In all correspondence relating to certificates of sale, or in sending in payments on notes, always give the number of the certificate of sale.

"This certificate should be returned to this office when the above-mentioned notes are paid, as deed will not be issued until it is so returned, or its absence accounted for.

(Internal Revenue stamp, denomination of ten cents.)

"All assignments of certificates of sale shall be executed and acknowledged in the same manner as a deed to real estate; and the assignee, upon full payment of the amount due on the purchase price and delivery to the Board such certificates and assignment, shall receive a deed for the lands described in such certificate in his own name, as if he were the original purchaser.

"Your attention is especially called to the provisions of section 13, of the Act of October 18, 1878, which is as follows: 'If any  
369 interest should remain unpaid on any note or notes, given for part of the purchase price of lands, for one year after the same becomes due, the sale and certificate shall be void, and all payments thereon shall be forfeited, and the land shall be deemed vacant, and shall be subject to sale as if it had not before been sold.'

"This law will be strictly enforced, and if you permit the interest on your notes mentioned in this certificate to remain unpaid for one year after it becomes due, this sale and certificate will be canceled and the land again offered for sale. It is not the duty of this office to give you any notice of your delinquency in this matter, but it is your duty to keep yourself informed of the condition of your notes and to pay the interest when due."

The foregoing papers were enclosed in an envelope, endorsed as follows: "8565. M. M. Long, 244. Application to purchase School Lands, T. 35 S., R. 4 E. Certificate of Sale No. 8565 issued Aug. 4, 1898. Deed Executed May 19, 1899. State Record of Deeds, Vol. 4, Page 244. Filed Aug. 4, 1898."

370 The papers in the other cases were substantially the same as those in 8565.

(Witness resuming:)

I don't know when Schneider left Portland. I don't know whether he left or not. He was in the office two or three times. Did not hear of him afterwards, to my recollection. I don't remember whether I received any letters from him. It seems to me there was a paper or papers that came to be signed through the mails and sent back. I have a kind of indistinct recollection of something of the fact, but it is not a very clear fact.

Cross-examination.

By Mr. WORTHINGTON:

I am about 68 years old. Think I was notary public from 1888 to 1899, or about the close of 1900. Think I ceased to be notary

about the first week of January, 1901. I was appointed every two years down to that time. I did not apply for re-appointment in 1901. The custom was for the Secretary of State to send a notice to the notary just before his commission expired, calling his attention to the fact, and sending him blanks to fill in and return asking for another appointment. I did not apply. I did not want it any more. I could have been appointed if I had wanted to. No trouble about it. I was a notary out there right along for twelve or thirteen years. My notary business was not the main business; sort of a convenience for current business. Suppose I executed quite a number of papers, though. I occasionally took acknowledgments of deeds. My regular business was to search records and abstracts of title, Multnomah County. That did not include school lands or State lands, mostly city property.

I was not in the habit of signing notarial certificates in blank. I don't think I did it except in these instances. I am not sure that I didn't, but I don't remember any such cases.

I cannot remember any person who came before me to take an acknowledgment while I was a notary public. Can't recall a single one. Don't think I ever signed acknowledgments in blank before.

Schneider was a total stranger to me when he came in and asked me to acknowledge these papers. He didn't bring any letters from anybody. Just walked in and represented himself as a stranger from San Francisco. Said he noticed my sign at the door, and thought he would come in and have a talk. I had never seen him before. He brought no letters from anybody. Didn't know then, and don't know now who he was, except what he told me. Have not seen him since.

Don't think there was anybody in my office but myself when he came. I was trying to be friendly and hospitable to a stranger in town. When he was there the first time, I signed the papers, and he said the parties would come in. He didn't have them with him then. After I signed the papers, he took them away with him. He did not leave them. The first time he came I let him have the papers to take away after I signed them. Don't know how many I signed the first time. I just signed them and put my seal on them, and left the whole in blank. He didn't tell me exactly what the papers were. I supposed they were to get State lands.

My understanding was he was buying lands from the State. And the state was glad to get rid of them, and he was going to take them. I understood that the people had filed on these lands, and were glad to sell their rights. I understood these papers which I was signing were to go to the State Land Office, and were to be relied upon by the State. At that time, I didn't appreciate that I was doing anything wrong. I supposed he was taking these lands for himself, and that he wanted to have everything regular. He paid me the regular notarial fee of one dollar for this work.

Can't remember whether it was a few days or a few weeks between first and second visits. Pretty hard to recall things that far back. Suppose it was a few weeks or months, or something like that, be-

tween first and second visits. Second time he went through about the same proceeding as the first.

"Q. You are quite sure you did not put anything on the paper except your name as notary public and your seal? A. I am not right sure."

Papers in an application to purchase picked out at random, happened to be 8587. Witness is asked if the words 10th of August and the "8" in "1898" are not in his handwriting. He says, "I don't think so." Don't think it looks like mine. That is the only reason I have for it. No recollection, as a matter of fact, whether I put that date there or not. I am just speaking from looking at the papers.

Have no recollection. Don't know what there is in the 10th  
373 that does not look like mine. I can't point out difference between the way I write "Aug." and the way it appears here.

This paper is shown to the jury for comparison in handwriting between the signatures the party admits and those about which he is being asked.

The application 8565 is pulled out at random. When asked whether he wrote "2nd Aug." over his signature, he says he is not very sure about it. Don't think it is his. Can't point out anything in the "2nd" or in the "Aug." that does not look like the way he writes it.

I don't recollect Mr. Schneider sitting down in my office and writing in the date at the same time I signed it. Don't recollect much about it. Don't think he did. If it should turn out that the ink in my signature and the ink in those dates is the same, I could not account for how Schneider could have taken them away, and then could have happened to get the same ink and the same pen. It is possible that he might have sat down there and written them. I have no recollection of it.

Another application taken out, 8574. Witness says that the date "6th August" does not look like his, but he has no recollection about it. Can't tell what there is in the "6th" or in the "August" that does not look like his. If the ink in the two should turn out to be the same, he could not explain it.

Witness answers as follows:

"You know it is possible that I may have done it."

Never kept any records of my notarial transactions. Notaries in Oregon do not keep records. The law does not require  
374 it. I have no means of saying anything about any certificates that I gave except my recollection, and I have no recollection of any particular transaction while I was a notary.

I recollect this transaction with Schneider, because he told me that the people would come, but they never came. That is all. They were to come back to verify the papers. Yes; Schneider did take the papers away with him, but I didn't know but what they were going to bring them back when they came. He told me the first time he came that the people would come, and I expected they would. When he came back the second time, I don't remember whether I called his attention to the fact that the people in the first transaction did not turn up. I don't remember whether I called his attention to that

fact when he came the third time. I think he came three times, but I am not sure. I did it because he wanted it attended to at once. He overcame my scruples, I guess. While at first I had some scruples and thought it somewhat irregular, I thought they ought to be there. Apparently, I changed my mind. After it happened, I never thought anything more about it, until some years afterwards, when one day Mr. Burns, the Government agent, came and asked me about it. I had not told anybody up to that time.

I know McCusker now, but I didn't know him then. I didn't know him until about four years ago, when I met him in Washington. That was the first time I ever saw him.

My business was running down land records in the Recorder  
375 of Deeds office, mostly city lots.

I never heard of Mr. Hyde until the time Mr. Burns came to see me, and I didn't know Mr. Benson. Didn't know that any such man was living.

Cross-examination.

By Mr. BIRNEY:

Yes, I thought the people would come in. No, I did not keep a list of their names. Didn't keep any list at all. No, I would not have known them if they had come in, but I thought Schneider was a straightforward, honest man, and would bring them in.

"Q. They were supposed to be sent in? A. I didn't know how he was going to get them there.

"Q. You did not inquire as to that at all? A. No, sir.

"Q. So you could not have recognized them and would not have known who they were if they had come in. A. Not unless Mr. Schneider had come in and introduced them, then I only would know he was Mr. Schneider by his telling me so."

Redirect examination.

By Mr. BAKER:

At Mr. Baker's suggestion, the witness again looks around the court room, stands up, but does not see anybody in the court room that brings Schneider to his mind. Does not see anybody there he recognizes.

376 Recross-examination.

By Mr. WORTHINGTON:

I have never been prosecuted for my connection with this business. I have no way of fixing the year when these things happened. Think it was in 1898. Not certain about the time; might have been '97 or '99. I have no means of fixing the date. I thing Mr. Burns when he came told me it was 1898. That is about the way I got my impression into my head.

"By Mr. WORTHINGTON:

"Q. You have never been prosecuted at all for your connection with this business? A. No, sir."

*Mrs. Belle A. Curtiss.*

Direct examination.

By Mr. BAKER:

Have lived in San Francisco for about fourteen years. Knows Hyde, Benson and Schneider; don't know Dimond. Worked for Hyde in 1897, over two years. Office first on Commercial Street, then moved to Montgomery. Names other clerks there. Schneider was Hyde's ranch foreman; not in the office there much. First became acquainted with Hyde when I went to work for him. Met Benson in Hyde's office when I went to work for Hyde. Could not say how often Benson was there. He came occasionally, same as other business men. Could not say how often, whether once a week or not. He came occasionally. Did not pay attention to  
377 the people who came into the office. Have heard him talk to Hyde about business. Benson was a competitor of Hyde. Both were engaged in locating State lands and selling them. Land attorneys, I suppose. I don't know how Benson carried on his business.

People made application to Hyde for State school lands, as their attorney. He located the lands for them, prepared all the papers. The land he bought he sold to others to place a scrip on other lands.

I don't know what, if anything, was paid to applicants. I had nothing to do with money matters. Don't know how applicants were obtained. Had not any dealings with them myself; know nothing about it.

Don't know anything about the use of "dummies." Had a conversation with Mr. Given about the matter. He read a statement yesterday at my hotel. Paid very little attention while he was reading. I was sick. I was writing, and didn't want to hear it. It confused me. Wanted my mind to be clear when I came on the stand today, and did not want the statement read to me—occasionally when I caught something he said, I made a correction. I don't know where that was from, but I don't think I made any such statements as were read to me, a great many of them. I testified before the grand jury also in New York and in California. I did not hear all the statement read to me by Mr. Given. Don't remember my testimony in New York. Remember parts of my testimony in California. Can answer the same questions truthfully; that is all I  
378 can do. Cannot tell what questions I was asked any place or what replies I made.

"By Mr. BAKER:

"Q. I ask you whether or not Mr. Given read you a statement in which you said that Mr. Hyde would or cause to be procured persons who had small sums of money, five, ten or fifteen or twenty-five dollars, as the case might be, who would allow the use of their names to make applications to purchase school lands from the States situated in forest reserves, and they would also use the names

of fictitious persons, styled dummies, in which names he would make application for those lands? A. No, sir. I never knew what Mr. Hyde paid for those lands; I had nothing to do with the cash at all. There was a cashier, and I knew nothing about the money matters.

"Q. My question is whether or not Mr. Given did not read you that statement and you did not say that was correct? A. No, sir. I did not."

My duties principally were stenographer when I first went there. Afterwards I was clerk in the forest reserve lands. My duties were to prepare papers. We had blank applications for selections. A certain number of papers had to accompany these. My duties were to keep a record of them in the books. Made out all papers pertaining to selection—selections, powers of attorney, deeds and abstracts.

When we wanted to make out an application for lieu lands, we got the base lands from our forest reserve lieu land that we had in one book, the docket. I have forgotten the number, but every section was put on one leaf, and a correct record kept.

Mr. Hyde owned the base lands in his name, and he had a great many clients, and there were a number of parties who had lands together with him—several by the name of Forbes and Sutor, Dutton and Symmes, Flora Sherman and A. S. Baldwin. I think Mr. C. W. Clarke only held the deeds to those lands as security for money he loaned to Hyde.

I remember two Morrisises. The names were Henry. Don't know their middle names. One was Hyde's cousin, and the other Hyde's uncle. They were father and son. Don't know Elizabeth Dimond. Her name was used in connection with these lieu lands. I know Schneider went to Oregon but cannot give the date. It might have been a year or a year and a half after I went in Mr. Hyde's office—I don't recall—when Schneider went to Oregon. I don't know how long he was there. He might have been there a month or he may have been two weeks.

"Q. Did you have any papers signed in blank in Mr. Hyde's office? A. We had a great many of Mr. Hyde's, when he would be going away, and we had a good many of Mr. Clarke's. The land being in Mr. Clarke's name, we had to have it there in order to make out the papers. He was away a good deal."

We had so many papers I could not designate them all. I don't recollect having any deeds signed in blank, or assignments or applications. I had nothing to do with the applications. Miss Farwell attended to them. She is dead. When I had any papers all prepared and the signatures, they would be turned over to Mr. Hyde or the office boy to attend to them. Usually when they were sent to the notary's, I would get them back in the course of a day. When I would send them they would have no jurats on them. When they were returned from the Notary's, they would be all right in legal form. When the papers were all prepared for a certain lieu land selection, a letter would be written to the register of the land office district in which the location was to be and sent on to him to have it put on to his records, and the papers sent on

to him to be put onto his records and be sent on to the General Land Office at Washington. Non-mineral affidavits would be included in these papers. Non-mineral affidavits were never filled in until we were making the selection. I saw blanks, I mean printed forms, not signed by anybody. They would be signed after the lieu selections and base lands were filled in; be signed by different parties who knew about the lands. I know that Mr. Brunner did. Don't remember whether Schneider signed any. Have seen Barrien in the office. He signed these non-mineral affidavits.

I signed two applications to purchase school lands. Hyde asked me one day if I would like to buy some lands. I stated I would, and made two applications. He paid me twenty dollars for the two. I didn't put up any money with the application. I didn't give any notes. At the time I signed these there were many other applicants coming to Mr. Hyde. He had a good many. I did not know how he was getting them.

381 Exhibit 133 shown witness. These are the two selections

I made; these lands in the bill of particulars. I made application for 640 acres. They were in forest reserves. These applications in her handwriting. 440 acres in the Sierra forest, and the others in the Pine Mountain and Saca Lake. I went before a notary. Think it was Mr. Trecou. Don't remember Mr. Given reading me a statement yesterday that I did not go before the notary at all. I never made such a statement, because I did go before a notary public when I signed the applications, and never could have made such a statement. It is not true. My best recollection is that I took the papers there myself on the way to lunch, and brought them back to the office with me. Can't say how many papers I had with me.

Don't know how long afterwards it was, but I made an assignment to Hyde. I went before a notary. I read the papers over. I prepared them myself.

Miss Farwell also made an application for school lands, and her sister, Miss Susie. Don't know what they got for making their applications.

Don't know C. N. Stein, but know he made an application. Mrs. Sarah Stein made an application.

"Q. Did Mr. Stein ever come to the office with anybody? A. Yes; he was in our office—well, quite a number of times, in regard to these selections."

I think there was some one with him at different times. I don't remember who. I paid little attention to them. I had nothing to do with the applications. I only knew when these papers were turned over to me as base for lieu lands, and I became familiar with the names that way. I don't know what the parties did when they went there. I had my own work to attend to.

382 James Scott was the janitor of our office building. He signed an application and an assignment. He brought a great many people in there. He was a colored man. He brought colored men. I don't know how often he would come, nor how many people he brought in. I presume they came about their applications, but I don't know. Miss Farwell had charge of that. I was busy with my own work.



which was entirely different from that. I was in the general office where they would come, but it was a large room. These people would generally see Mr. Hyde or Miss Farwell. She had charge of the school selections. I had charge of the base book. When the selections went through the State Land Office and the certificates of purchase issued, they were turned over to me, and then I entered them on the docket. I would get a great many certificates of purchase in a day to enter on my docket. Cannot tell how many. They would be mailed from the Land Office at Sacramento to Mr. Hyde, and I would get them in the course of business in the office.

Rebecca L. Strong, the lady with whom I boarded, filed an application for school lands. I told her about my making application, and asked her if she wanted to make some money. I told her if she could not pay for it, that Mr. Hyde would buy it from her, but I thought if she would keep it there would be some money in it. She signed the application. I took her before a notary public  
 383 myself, and afterwards she didn't have the money and her husband objected, and she sold it to Mr. Hyde, and he paid her ten dollars, as I recollect, and when she made the deed of assignment to Hyde I took her to the notary myself. I think to Mr. Tricon's office.

When Mr. Benson was out of town, Mr. Hyde dictated some letters to me to write to Benson. They related to land business, as near as I can recollect, to the purchase of forest reserve lieu lands. Mr. Hyde dictated some correspondence to Schneider to me once when Schneider was in Oregon. But I had very little to do with the correspondence then. I was not the stenographer; so I saw little of it. Don't know what Schneider wrote to Hyde, except it was in relation to buying lands in forest reserves in Oregon. I only remember he went up there to purchase lands, and the correspondence related to that, and he made a report every few days in regard to the land that he was getting, etc. The correspondence was frequent while he was there. A great many deeds were received from him. The deeds were already assigned or deeded, and the lands were deeded to Mr. Hyde. The Oregon laws were different from the California laws. There were deeds given there for the school lands. In California there were certificates of purchase issued after the applications were given, three months after the date of application, and it was so issued. In Oregon they give the deeds right away, I believe.

I don't remember what was said in the correspondence about the amounts to give the applicants, only that Hyde wanted  
 384 Schneider to pay more, to pay whatever they asked for the lands, that he had much demand for it. I don't know from any correspondence what Schneider was authorized to pay.

I don't know what interest Benson had in those Oregon lands. I know about the contract between Hyde and Benson, but I don't know whether Schneider was in Oregon when the contract was made. I don't know whether he was in San Francisco then. He lived in East Oakland. I don't know what street or number. I think Elizabeth Diamond's address was at Mr. Schneider's. I think she had two addresses. The other one was in Oakland, too. I think

it was at Mr. Morris's house. I prepared papers for her signature. I can't tell the details. I think I prepared some of the selections with her land used as base land and the deed to the United States. Don't really know all the papers I did prepare.

Whenever I prepared any papers, they were sent in to Mr. Hyde's office, so he could send them to the proper party for signature. We would get them back in the course of a day, and if the parties were in town we would get them back as soon as they could be reached. I don't know whether the parties were in town or not. Don't remember how long it would take to get the papers back which were made out for Elizabeth Dimond. I don't remember any Elizabeth Dimond paper given to Mr. Hyde and returned in an hour. I remember one paper being returned in a short space of time—but whether it was a half an hour or three quarters of an hour or an hour I could not say. I just remember one paper being delivered sooner than the others had been. Never made the statement that  
 385      one of the papers was returned by Mr. Hyde in half an hour—could not approximate the time; could not pick out this one paper out of the great number I handled or tell anything about it.

Mr. Hyde dictated a good many letters to me to people in Washington. Most of them were sent to the Commissioner of the General Land Office, and to Mr. Hyde's attorney here; don't remember his name. Used to write a good many letters to him. Mr. Keigwin was his name.

Remember "Dear Sir" letters. Know they related to land business generally. Can't tell any particular. Mr. Hyde directed the envelopes for these letters. I saw one one day after it was directed. It was directed to a Mr. Barnes. I don't remember his initials. It was sent to Washington. I don't remember the other part of the address. Can't say whether there was anything in the letters about land matters pending in the Land Office at Washington.

Witness is shown and identifies contract between Hyde and Benson.

I know B. F. Allen. Don't recall his title. He was a Government employee in relation to forest reserves. Have seen him in Hyde's office, not very often. His headquarters were in the southern part of the State. Hyde had correspondence with him about forest reserves. Hyde dictated letters to Allen to me.

I know Mr. Schneider made some copies of maps. Don't know where he got the originals. In relation to forest reserves; could not say what forest reserves. Think they were maps of California land.

When letters to Mr. Allen were dictated to me by Mr.  
 386      Hyde, I sometimes signed his name for him and put my initials, B. A. C. after his name.

Knew Schneider very well. Recognized him in court room. Think I would know him any place. Looks just like he did in 1897 or 1898. He wore a mustache in 1897 and 1898.

Schneider attended to some of the papers occasionally, but was not in the office very much. He attended to Hyde's ranches. There was a very short time when he helped me to attend to some of the

State school applications. Don't remember that he ever brought anybody there to make applications. Could not say whether he ever procured any applications for forest reserves. He went to Sacramento and attended to filing the applications, the school land applications. Schneider took these applications up to Sacramento to file, so that they would get there sooner than if they were sent by mail.

Mr. Hyde was very well known in the Land Office. Had so much business there.

I think there were one or two letters dictated to me for a Captain Thomas in Washington. Mr. Benson dictated them. Benson had been in our office at the time, but don't remember the particular circumstances.

This witness was then shown Exhibit 26—deed of relinquishment from Elizabeth Dimond to the United States—and she identified same as being in her handwriting. She was also shown power of attorney—exhibit 134—and identified handwriting as that of Herbert Clark and her own signature thereto as a witness to the signature H. M. Morris.

### 387 Cross-examination.

By Mr. CAMPBELL:

Went to work for Hyde in the Fall of '97. Left in the fall of '99. There about two years. Miss Doyle came after I left. I think Mr. Slack took my place.

When I was there Hyde had a book in which he kept land that other people were interested in with him. Mr. Benson's name did not appear in reference to being interested with Hyde in any of those lands. Mr. Hyde dictated some letters to me to send to Benson while Benson was away from San Francisco traveling, relating to lands which Benson had sold. Lands that Hyde had acquired. Benson was selling the base land while he was away—the land that Hyde acquired. Benson and Hyde were strong competitors in the acquisition of land.

"Q. Is it not a fact that when Mr. Schneider or any person or representative of Mr. Hyde's office was sent to Sacramento to file applications, it was to get ahead of Benson?"

To this question counsel for the Government objected, saying, "Let us see if she knows."

The presiding Justice said: "I hardly think that is admissible."

"Mr. CAMPBELL: Why, if your Honor please, she can state the fact.

"The COURT: The fact is admissible; but I do not think she can state the ultimate fact. It would be her inference from various circumstances, and a matter of opinion, I think.

388 "Mr. CAMPBELL: But she stated that he did go there for a certain purpose.

"The COURT: I have ruled on this, and I do not care to argue it."

To the ruling of the Court excluding the answer to the question, the defendants, and each of them, duly excepted.

## Cross-examination (continued).

By Mr. WORTHINGTON:

When I first went to Hyde, his office was on Commercial street. While I was there he moved to Montgomery street. Cannot state definitely when he moved; but I had been there quite a number of months when it happened. It was not eighteen months. No private telephone between Hyde's and Benson's offices while Hyde — on Commercial Street. Private telephone was put in Hyde's office in Montgomery street after Benson commenced selling the lieu-land. Hyde and Benson in the same business, the same as competitors in any business would be. Not good friends most of the time—competitors as any two men or three men or a number of men would be in the same business. Great deal of trouble between the two for a long time. I presume over business matters. This was before the contract of September 1898. The book in which the base lands were entered was called Docket 19, I think. I made all the entries in this book while I was there. They were entries of the chief subdivisions of school lands that Hyde acquired or was managing for himself or somebody else. When he had them for somebody else, that person's name would appear always at the top of the page. Each subdivision or section had a page, and there was a diagram of the section at the top, and I always designated with a colored pencil the land that Hyde or his clients owned, and each page would show who had an interest in every part of that section. Every entry on the page would give a full and complete history of the thing as it went along. Up to the time I left, Benson's name was not entered in that book in any way, or for any purpose. There was another book similar to that to show the selections that were made; that is, lands obtained from the United States in lieu of the lands in Docket 19. I also kept this book all the time I was there. In this book there was a complete history of the case, and every paper that was made out had a line to itself, giving the date, etc.—every date of sale, every date of deeds or assignments, powers of attorney, and affidavits, and everything that pertained to that particular selection. Mr. Benson's name did appear in this book when he furnished any of the lieu-land according to that contract. When Benson found the lands of the Government to be taken in lieu or in exchange of the state lands, then it would be entered in that book in some way, and that that was the land he was interested in. That is, if he furnished some of the base land, or lieu-land. There was a cash book. I did not keep it. I do not know anything about the cash book. When Mr. Benson made a sale under the contract, I wrote who it was sold to and the price they paid, and the history, as far as I knew it, but the cash was kept in another book. I never made any entries of that kind until after the date of the contract.

A great number of the lands Benson located under the contract were in the State of Washington, and quite a number in Oregon. This contract was dictated to me. I had a conversation with Hyde shortly after this contract was executed. (This conversation was excluded by the Court.)

Schneider was Hyde's ranch foreman most of the time I was there. He was only engaged in the office there a few weeks at two or three different times. He never had charge of the clerks, and did not give orders or directions to anybody. Never called chief clerk. I could not say whether he was making maps or copying maps. There for a few weeks at a time. He had a small room with a desk in it. I passed through it a number of times and saw him working. Didn't pay particular attention. He was sent to Sacramento to file some applications. Under my direction principally. He helped me for a short time. Not very long, in making out some of the different papers in the lieu-land selections. I did my part of making out the papers and then I turned them over to him and he finished up the part that he did, and they were returned to me for sending on to the different registers or to the Land Office in Washington, wherever it happened to be. I generally wrote those letters myself. It was merely clerical work that he did. Then he went to Oregon once for a little while. There is nothing more that I can recollect that Schneider did around there.

Slack was in Hyde's employ just a few weeks before I left, 391 but he was not in the office. He was up in Oregon. He took my place when I left. Never heard of his being called chief clerk. Never heard of Schneider being called chief clerk. In fact, he was not in the office for some time before I left. I could not say how long. Many times quite a bundle of papers would be sent down to the notary public from Hyde's office—there would be the application for the land, the power of attorney and affidavits, and all the different papers that pertained to the different cases. They were papers in relation to getting selections in lieu of state lands. I understood thoroughly the business of selling scrip, or transferring papers referred to as scrip. These papers called scrip were sold; sometimes sent to banks in different parts of the country to be delivered up when the money was paid. If the parties paid all the money the scrip would go to them directly. At other times, the papers would be placed with responsible parties until the money was paid, and then the papers were delivered. Sometimes they would be sent by express, or registered mail to whatever places in different parts of the country, where the parties lived who bought them. It was all over the country; principally in the coast states.

Circulars offering to sell scrip came to Hyde's office from time to time, from dealers all over the country, and we also sent out circulars offering to sell scrip land.

Among these papers called scrip sent out to a party who bought would be the selection for them to sign and a deed for them, and some non-mineral affidavits, and power of attorney, an abstract of title. The power of attorney authorizing somebody to make a conveyance of the land to the purchaser might be blank where 392 the name usually goes, because we would not always know who it was to go to; and they would put it in and go before a notary and then the power of attorney would be returned.

Witness is shown exhibit 26, partially in her handwriting, being a relinquishment to the United States. This had nothing to do with

getting the land from the state, but with turning it over to the Government after it was obtained from the State.

Witness is shown exhibit 134, a power of attorney partially in Herbert Clark's handwriting. Power of attorney to locate selected lands in lieu of the lands that had been surrendered. Nothing to do with getting the lands from the states.

I kept carbon copies of the "Dear Sir" letters dictated to me by Hyde. I don't recollect where the carbon copies of the "Dear Sir" letters were kept. There was a special file of them. They were kept where the clerks generally had access to them if they had any business with them. I know what was in them because they were dictated to me, and I made carbon copies to keep for reference. I don't know whether others did, but if I had occasion to look at them I did so. If any other clerk had occasion to examine them, there was nothing to prevent his doing so. I kept copies of all the letters sent to Mr. Allen. They were kept in the ordinary letter files. Had a great deal of correspondence with Britton and Gray. Don't know that any of the "Dear Sir" letters were sent to Britton & Gray. The

notaries public very often came to the office to take acknowledgments of Mr. Hyde to papers executed by him. They seemed to favor Hyde at the Sacramento Land Office. If he wanted any case pushed through, they did it if they could. I never went to Sacramento myself. Sometimes they were slow at the Sacramento Land Office and we would need the papers, and I have often written letters trying to hurry things, and then they would be more prompt about sending them.

As to the two applications to purchase school lands made by this witness, the witness was questioned as follows:

"By Mr. WORTHINGTON:

"Q. This paper is in your handwriting, which contains the description. A. Yes.

"Q. Can you tell from looking at that which of them was first, in point of time, in filing your application in the State Land Office? A. It tells here the date, I think. I would not know without looking at that.

"Q. When did you make this? A. At the time. I don't know what I ever did it for, any more than for fun.

"Q. One says February 23, 1899, and the other October 17, 1898. Now, as to the one of the 23rd of February, 1899, do you remember how long after you filed your application in the State Land Office it was before you made your assignment to Mr. Hyde. A. Well, it was after the certificate of purchase was issued, but I couldn't tell what time. I don't remember it."

\* \* \* \* \*

"Q. Between the time when you made the application in the case, whatever the date was, and the time you made the assignment to Mr. Hyde, had you any understanding or arrangement with him or with anybody else which prevented you from exhibiting your right of ownership over the land? A. No, sir."

At this point counsel for the government stated that they had inadvertently omitted to offer in evidence the papers relating to the applications made by the witness to the State of California for school lands, and they were accordingly offered in evidence by the Government at that time.

Among the papers so offered in evidence were the application and other papers in the record of purchase No. 2379 (Exhibit 191), which are in the words and figures following:

*Approval of Application to Purchase State Lands.*

Location No. 2379.

Independence Land District.

State of California, Office of Surveyor-General.

SACRAMENTO, Dec. 31, 1898.

I hereby Certify, That in accordance with the provisions of title eight of the Political Code of California, Belle A. Curtis did, on the 23rd day of August, 1898, file in this office Application No. 2379 in due form, to purchase from the State of California the following described land in Fresno County, to wit: N. W.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  395 of N. E.  $\frac{1}{4}$  & N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 16, T. 9 S., R. 30 E. W.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Sec. 36 T. 9 S., R. 29 E. & N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Section 36, Township 12 S., Range 28 E. M. D. Meridian, containing 440 acres.

And it appearing that the said applicant has complied with all the requirements of the law, and that the land is not timbered land, and is subject to sale by the State of California, said Application No. 2379 is hereby approved.

The County Treasurer of said County will, within fifty days from this date, receive from said applicant the sum of Five hundred & fifty (550.00) dollars, being payment in full for said land; or the County Treasurer will, at the option of said applicant, receive the sum of one hundred & Ten & 9/100 (110.09) dollars, being twenty per cent of the purchase money, with interest on the balance at the rate of seven per cent per annum, in advance, from the date of this approval to the first day of January next, and will also receive the sum of three dollars for a certificate of purchase, and if such payment is not made within the said fifty days, then the land above described shall revert to the State, and the said application shall become null and void.

Witness my hand and official seal the day and year first above mentioned.

[SEAL.]

M. J. WRIGHT,

*Surveyor-General,*

By ———, *Deputy.*

Certificate of Register of United States Land Office, dated ———, 190—.

*Political Code.*

SECTION 3512. Whenever any survey or location has been  
 396 made or approved, the purchaser must, within fifty days from  
 the date of approval or location, present his copy of the same  
 to the County Treasurer, who must receive the amount to be paid  
 and the fee for the certificate of purchase, indorsing his receipt  
 therefor upon the certificate of location or survey, and returning it  
 to the purchaser.

SECTION 3513. In case payment is not made within fifty days, the  
 lands described in the survey or location revert to the State without  
 suit, and the survey or location is void. All subsequent payments  
 must be made to the County Treasurer in like manner, who must  
 indorse the same upon the certificate. The Treasurer must direct the  
 purchaser to take the certificate so indorsed to the Auditor, who must  
 charge the Treasurer with the amount received, and make his check  
 upon the indorsed receipt.

Know all men by these presents, That I, Belle A. Curtis, being de-  
 siring of purchasing from the State of California the following de-  
 scribed land, to wit: The NW  $\frac{1}{4}$ , W  $\frac{1}{2}$  of NE  $\frac{1}{4}$  and the NE  $\frac{1}{4}$  of  
 NE  $\frac{1}{4}$  Sec. 16, T. 9 S., R. 30 E.; the W  $\frac{1}{2}$  of SW  $\frac{1}{4}$  Sec. 36, T. 9 S.,  
 R. 29 E.; and the N  $\frac{1}{2}$  of SE  $\frac{1}{4}$  Sec. 36 T. 12 S., R. 28 E. M. D. M.  
 do hereby nominate and appoint F. A. Hyde of the City & County  
 of San Francisco as my agent and attorney in fact to represent me in  
 the office of the State Surveyor-General and Register of the State  
 Land Office of the State of California to file my application to pur-  
 chase the said land, and to receive from the State Surveyor-General  
 an approval of the said location, and, upon due payment being made,  
 to receive from the Register of the State Land Office my certificate  
 of purchase for said land, which documents, or any others pertaining  
 to my case, the said State Surveyor-General and Register of the  
 State Land Office is hereby authorized to deliver to my said attorney.

In case it may be deemed advisable by my said attorney, I  
 397 hereby authorize him, for me and in my name, place and  
 stead, to abandon any application to purchase the said land  
 which I have filed or may hereafter file, or to abandon any part  
 thereof.

Witness my hand this 20th day of August 1898.

BELLE A. CURTIS,  
 338 Eddy St., San Francisco, Cal.

STATE OF CALIFORNIA,

*City & County of San Francisco, ss:*

On this 20th day of August, One Thousand Eight Hundred and  
 Ninety eight before me Henry P. Tricou A Notary Public in and for  
 the City and County of San Francisco personally appeared Belle A.  
 Curtis known to me to be the same person whose name is subscribed  
 to the within instrument, and she duly acknowledged to me that  
 she executed the same.



In witness whereof I have hereunto set my hand and affixed my official seal, the day and year first above written.

[SEAL]

HENRY P. TRICOU,  
*Notary Public in and for the City and County  
of San Francisco, State of California.*

*Application to Purchase State Lands.*

Location No. 2379. Independence Land District.

STATE OF CALIFORNIA,  
*City and County of San Francisco.*

To the State Surveyor-General, Sacramento:

I, Belle A. Curtis, of San Francisco City and County, do  
398 hereby apply to purchase the land hereinafter described, and  
in support of my application I do solemnly swear that I am  
entitled to purchase and hold real estate in my own name, a citizen  
of the United States, a resident of this State, of lawful age. That I  
desire to purchase from the State of California, under provisions of  
title eight of the Political Code, the following described land in  
Fresno County, to-wit:

The NW  $\frac{1}{4}$ , W  $\frac{1}{2}$  of NE  $\frac{1}{4}$  and the NE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  Sec. 16,  
T. 9 S., R. 30 E. the W  $\frac{1}{2}$  of SW  $\frac{1}{4}$  Sec. 36, T. 9 S., R. 29 E., and  
the N  $\frac{1}{2}$  of SE  $\frac{1}{4}$  Sec. 36, T. 12 S., R. 28 E. M. D. M.

Containing 440 acres.

That there is no occupation of said land adverse to any that I  
have. (a).....

That I desire to purchase the same for my own use and benefit,  
and for the use or benefit of no other person or persons whomsoever,  
and that I have made no contract or agreement to sell the same.  
(b).....

That said land is not suitable for cultivation; that I have not entered  
any portion of any lands mentioned in section three thousand  
four hundred and ninety-four of the Political Code (to wit, the unsold  
portion of the five hundred thousand acres granted to the State  
for school purposes, the sixteenth and thirty-sixth sections, and the  
lands selected in lieu thereof), which, together with that now sought  
to be purchased, exceeds (c).....  
640 acres.

BELLE A. CURTIS,  
399 *Post Office Address: 338 Eddy St.,  
San Francisco City and County.*

Subscribed and sworn to before me this 20th day of August, 1898.

[SEAL.]

HENRY P. TRICOU,  
*Notary Public in and for the City and County  
of San Francisco, State of California.*

(a) If there is an adverse occupation, then the affidavit must  
state that the adverse occupant (giving his name) has been in such  
occupation more than sixty days since the plat was filed in the  
United States Land Office.

(b) If the land is suitable for cultivation, then here add "That I am an actual settler thereon."

(c) If the land is suitable for cultivation, then the area to be here inserted must be three hundred and twenty acres, otherwise six hundred and forty acres.

NOTE.—If the applicant is a female, the affidavit must state "that she is entitled to purchase and hold real estate in her own name." (Section 3496, Political Code.)

Lands belonging to the State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law. (Constitution of California, Article XVII, Section 3.)

Any false statement contained in the affidavit provided for in section three thousand four hundred and ninety-five, defeats the right of the applicant to purchase the land, or to receive any evidence of title thereto, and if willfully false, subjects him also to punishment for perjury. Timber lands belonging to this State shall be sold for cash only; and the Surveyor-General and Register of the State Land Office must make and enforce all necessary rules and regulations to prevent the sale of or issuance of any evidence of title to any timber land of the State, except on payment in cash of the full price fixed therefor by law. (Section 3500, Political Code.)

All applications, under whatsoever Act, filed in the office of the Surveyor-General, must be retained ninety days before approval, and must be approved (when there is no conflict) by the Surveyor-General, at the expiration of six months, subject, however, to the provisions of sections thirty-four hundred and six and thirty-four hundred and seven of this Code, and all unapproved applications which have been on file over six months, wherein the approval has not been demanded, or wherein the contest has not been referred to Court, or a demand made for an order of reference, as provided in section thirty-four hundred and fourteen of the Political Code, shall be null and void.

This Act shall take effect on the first day of August, eighteen hundred and eighty-five, and the Surveyor-General shall give notice to each applicant to be affected thereby, by sending to said applicant, or his attorney, a copy of this Act. (Section 3498, Political Code.)

#### Read Your Application Carefully.

401 (Endorsed on back as follows:) Cert. #14445. Feb'y 23rd, 1899. Patent # 10015, May 23rd, 1900. Application No. 2379. Independence Land District. NW  $\frac{1}{4}$ , W  $\frac{1}{2}$  of NE  $\frac{1}{4}$ , NE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  Sec. 16, T. 9 S., R. 30 E. W  $\frac{1}{2}$  of SW  $\frac{1}{4}$  Sec. 36, T. 9 S., R. 29 E. N  $\frac{1}{2}$  of SE  $\frac{1}{4}$ . Sec. 36, Tp. 12 S. Range 28 E., MD. Meridian. Containing 140 acres. Belle A Curtis, Applicant, 338 Eddy St., San Francisco. Received and Filed Aug. 23, 1898. M. J. Wright, Surveyor-General. By C. A. Bump. Approved Dec. 31, 1898. M. J. Wright, Surveyor-General. By ———, Deputy.

Know all men by these presents, That I, Belle A. Curtis (widow) of the City and County of San Francisco, State of California, for and in consideration of the sum of One thousand one hundred (\$1100) dollars do hereby remise, release and forever quit-claim unto F. A. Hyde & Co., a corporation organized under the laws of the State of California, its successors and assigns forever, all the certain tract of land situated in the County of Fresno, State of California, and described as follows, to wit: North West quarter, West half of North East quarter and North East quarter of North East quarter of Section Sixteen in Township Nine South, Range Thirty East, the West half of the South West quarter of Section Thirty six, in Township Nine South, Range Twenty nine East, and the North half of the South East quarter of Section Thirty six, in Township Twelve South, Range twenty eight East, Mount Diablo Meridian.

Together with the appurtenances thereunto belonging.

In witness whereof I have hereunto set my hand and seal this the 24th day of February, A. D. 1900.

BELLE A. CURTIS. [SEAL.]

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this twenty-fourth day of February one thousand nine hundred (1900) before me Thomas S. Burns, a Notary Public in and for the said City and County of San Francisco, personally appeared Belle A. Curtis, (widow) personally known to me to be the same person whose name is subscribed to the within instrument and she duly acknowledged to me that (s)he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL.]

THOMAS S. BURNS,

*Notary Public in and for the City and County  
of San Francisco, State of California.*

(Two revenue stamps 50 cents each.)

403

*Certificate of Purchase.*

Location No. 2379.

No. 14445.

Independence Land District.

State Land Office of the State of California.

State School Land Grant of 16th and 36th Sections.

Price per Acre.....One 25/100 Dollars.

SACRAMENTO, 23D DAY OF February, 1899.

It appearing from the Report of the County Treasurer,

That on February 17th, 1899, Belle A. Curtis paid to the State of California the sum of One hundred and ten & 09/100 (110.09) Dollars, being twenty per cent of the purchase money, and interest on the balance up to January 1st, 1899, in advance, for 440 acres of

## State School Land

described as follows: NW<sup>4</sup>, W<sup>2</sup> of NE<sup>4</sup> and NE<sup>4</sup> of NE<sup>4</sup> of Section 16, T. 9 S. R. 30 E.; W<sup>2</sup> of SW<sup>4</sup> of Section 33, T. 9 S., R. 29 E., and N<sup>2</sup> of SE<sup>4</sup> of Section 36, in Township No. 12 South, Range No. 28 East, Mount Diablo Meridian.

Now, therefore, be it known, That the said Belle A. Curtis having made payment of said twenty per cent and first year's interest for the above described tract of land, is the purchaser of the same, and after having in all other respects complied with the requirements of the laws providing for the sale of said lands, and the same having been confirmed to the State, and on surrendering this certificate to the State of California, the said Belle A. Curtis or her assigns, shall be entitled to receive a Patent for the same.

In witness whereof the Register of said Land Office has  
404 hereto set his hand and affixed his Seal of Office the day and date above mentioned.

[SEAL.]

M. J. WRIGHT,

*Register of State Land Office.*

Balance of Purchase Money due, \$440.00.

Interest computed from December 31st, 1898.

Fresno County.

(Written across face in red ink:) Canceled May 23d, 1900. Patent 10015.

(Endorsed:) Received from F. A. Hyde Four Hundred and Eighty-one 07/100 Dollars, being payment in full on the within described tract of land. County Treasurer's Office, Fresno County, 21st day of April, 1900. H. E. B. S. W. Marshall, County Treasurer.

The record of the other purchase by this witness (Exhibit 192) is similar to the record already introduced, except that it contains no assignment of the school lands applied for. The power of attorney is the same. The dates of the several papers are as follows:

Application to Purchase, March 7, 1898.

Power of Attorney to F. A. Hyde, March 7, 1898.

Certificate of Approval, August 22, 1898.

405 Certificate of Purchase, October 17, 1898.

Cross-examination resumed.

By Mr. WORTHINGTON:

It is a fact that in the State Land Office it was required, when an application was filed, that there should be such a power of attorney as the one just read, so that they would know with whom to communicate.

"Q. Was that ever treated, or considered, in the business of the office, as transferring a title, or doing anything more than requiring the attorney to appear for the applicant?"

Mr. BAKER: The Government objects to that. The paper speaks for itself.

"The COURT: I think the question would be open to that objection.

"Mr. WORTHINGTON: I am not asking what the legal effect of the paper is, but what effect was given to it at the time.

"The COURT: That is the objection stated. I do not think that is material.

"Mr. WORTHINGTON: I offer it to show that by the practice as understood in the office, the power of attorney was given simply for the purpose and only for the purpose of authorizing the person to whom the power of attorney was given to appear and act for the applicants at the land office, just as an attorney will appear  
406 in court here and act for a client and was never considered or treated, either in the office of Mr. Hyde, or in the land office of the State, as transferring the title.

"The COURT: The ruling is the same. An exception will be noted.

To which ruling of the Court counsel for the defendants and each of them duly excepted.

"Q. Why was it that a year after this power of attorney was executed, you executed the paper of the 24th of February, 1900, by which you purport to remise, release and forever quit-claim to F. A. Hyde & Company all that tract of land?"

To this question, counsel for the Government objected, on the ground that "it is not supported by the evidence."

"The COURT: Is the question why she executed the deed?"

"Mr. WORTHINGTON: I asked her why it was, having executed this power of attorney on the 20th of August, 1898, she in February, 1900, executed this other paper, which is a deed conveying a title to F. A. Hyde & Company. I offer to show that the reason the quit-claim deed was made was because both she and Mr. Hyde understood the effect of what had been done, which was to leave the title in her, and that this deed was to put the title in Hyde & Company."

But the Court sustained the objection and refused to allow the witness to answer the question. To which ruling of the Court counsel for defendants, and each of them, duly excepted.

407 The WITNESS (resuming): The non-mineral affidavit which would accompany the papers had to be signed by someone who had been on the land and knew the nature of it. The applicant could not sign it unless he had been on the land himself and was aware that it was fit for agricultural purposes only. When these non-mineral affidavits went out with the papers ordinarily they would not be acknowledged or signed at all.

Mr. Hyde was the attorney in the two selections I made, and he made the payments. I did not make them, and Hyde didn't make the payments out of my money. I did not advance any money. When I first made the selections I thought I would get the money to make the payments from an uncle of mine, and he was away. Then I changed my mind and decided to let Mr. Hyde have it. I changed my mind after the certificate of purchase was issued to

me; I don't know how long. I didn't ask Mr. Hyde to make the first payment on the land when the application was sent in. I don't know how he came to do it.

Redirect examination.

By Mr. BAKER:

When the papers for the selection came on to Washington, the non-mineral affidavits accompanying the papers had to be acknowledged and sworn to.

About Schneider helping me: I kept the dockets, and filled in the papers with the base land. I would go to my books and select some base land, and then fill in the land that was to be applied for, 408 and then turn the papers over to Mr. Schneider. He would see that the signatures were properly on and the non-mineral affidavits prepared, and the proper jurats to the papers.

"Q. What do you mean by saying he (Schneider) had to see the proper jurat was put to the papers? Do you mean it was to be executed, or put there so it could be executed? A. To be executed."

*George W. Davis.*

Direct examination.

By Mr. BAKER:

Resides now at Hayward, California. In 1898, resided in Salem, Oregon. Resided there for about eight years; left there in 1900, I think. In 1897, 1898 and 1899, I was conducting a stone quarry in Lincoln County, Oregon. I was notary public during the years 1897, 1898 and 1899.

I think in 1898—I am not positive—possibly 1897 and 1898, I procured some applications for the purchase of school lands from a number of parties. They were mostly my friends, some my relatives, and some employees. I would ask them if they ever applied to purchase any lands from the State. If they had not, I would ask them if they desired to do so, and if they did not I would ask them if they would make application for me—that is, make application for the purchase of those lands and deliver them to me in case they did so. I would take their applications. They would sign the application and make an assignment at the same 409 time, usually before me as a notary public. They would appear once before me, I think. I gave them usually a dollar; sometimes two, I think. Hard for me to recollect, for I kept no record. They did not pay any money for part payment of the lands.

"Q. Just state how many papers they signed at the time you obtained them. A. Well, they would sign the application and also the assignment, and to the best of my recollection two notes, which would be part payment.

"Q. I will ask you whether you are sure about that. A. Not in every case, I am not sure."

When the parties would sign an application, it would contain a description of the lands. To the best of my recollection, that would be all. It is a long time, and I am not positive, but I think the application itself would be dated at the time it was signed; but the assignment I am not so clear about. I think that perhaps would not include the date of the assignment, but just the signature. I don't think the assignment would have a description of the property. It didn't have the name of the assignee.

I got these applications by an arrangement with Mr. E. P. McCornack. He has been a practicing land attorney in Oregon. At this time, he was a land attorney and a banker. I got them at his request. McCornack told me he would require some applications for the purchase of school lands, and asked me if I could get them.

When I got them, I turned the larger number over to him.  
410 Some I filed myself, at his request. In the case of the ones that I filed myself, I got one-third of the purchase money from Mr. McCornack.

I don't know the defendant Schneider. Don't know that I ever met him or ever saw him. I met the defendant Hyde in his office about a year and a half ago.

I think I got practically all the applications—the blanks—from Mr. McCornack and part from the Land Office. The ones I got from Mr. McCornack would be blank at the time. I don't think the description of the land would be filled in when I had them acknowledged. I would sometimes put in the descriptions, which I would get from Mr. McCornack. My name appears as notary on the assignment.

None of these people in the applications I obtained were fictitious persons. They were all persons known to me. Many of them are my employes in the stone quarry.

In none of the cases where I got the application and the assignment were the two papers signed at different times—they were all signed at the same time.

Counsel for the Government then introduced in evidence thirty-six of the records of State land purchases produced by the witness George G. Brown from the Oregon State Land Office, and the witness identified the cases as those in which he had obtained the applications to purchase and the assignments in the manner stated in his testimony. The applicant in each case was paid \$1 or \$2 for signing the papers, and both the application to purchase and the assignment were signed at the same time. None of the applicants furnished any money to pay for the lands, and none of them appeared before the notary more than once.

411 Twelve of the cases embrace school lands, described in whole or in part in counts 5, 8, 10, 11, 14, 15, 17, 18, 19, 20, 21 and 22 of the indictment, as stated in the testimony of the witness John McPhaul hereinafter given. The other twenty-four cases embrace school lands, described in List B of the bill of particulars.

Witness further testified that as to all the foregoing cases the ap-

plications were obtained in practically the same way; that none of the applicants appeared before him as notary more than once; and that he did not put the name of the assignee in the assignment in any of the cases.

#### Cross-examination.

By Mr. WORTHINGTON:

I am sixty-four years old. I am not positive, but think I was notary for about three or four years from 1897. I had only one appointment as notary. One was all I asked for. I didn't care for it, and let it drop. I didn't care to keep it up. I was the clerk of the State Land Board from 1891 to 1895, and in that way became very familiar with the business there and the regulations and customs. From 1890 on, I lived in Salem. That is where the State Land Office is.

Mr. McCornack at that time was the President of the First National Bank, a substantial, well-known citizen, of good reputation. At that time, I was running a stone quarry in Lincoln County and shipping stone to San Francisco, and Mr. McCornack was my  
412 banker, and when I wanted money I got it from him. I borrowed money there when I needed it. He asked me if I could secure some applications to purchase school lands for him. I told him I thought I could. That is the way it came about. When he wanted some he asked me, and I got them when it was convenient. I went to no trouble about it. Did it as an accommodation as much as anything else.

I did not in every case turn over to the applicants the money which I got from McCornack. I had a number of friends, and I would ask them how much for this, and they might say, "Nothing at all; it is all right;" but so far as the money for it was concerned, I did not care for it. I was not doing it to make money. I suppose I got some compensation. I kept no account of it. I had no arrangement with Mr. McCornack that he was to give me so much for each application. He did not put any limit on what I was to pay to the applicants. He would usually say, I want about so many applications, and when I got them he would pay me for them. He left me to get them for what I could.

I went about this business openly. No pretense of covering it up at all. I would ask people, friends, if they had ever bought any lands from the State or if they expected to for their own use, and in case they had not and did not expect to buy it for themselves, I would tell them of their rights; and if they saw fit to make application with me it would be transferred, and I usually gave them from a dollar to two dollars for doing it.

I personally solicited these applications. The majority of  
413 the people lived in Lincoln County. Salem is in Marion County. I got very few applicants in Marion County. I didn't get many applicants in Marion County. They were all persons that I knew personally or came to me in such a way that I knew they were the people they purported to be. I told each one in advance that he had the right to make application, and wanted to



know whether or not he had done it. I told them they had the right to purchase, and transfer if they saw fit, and if they did not intend to apply for themselves, I asked them to do it through me. I did not tell anybody I was acting for Mr. McCornack. I was instructed to keep this quiet, but I thought, as a matter of business I ought to keep it quiet.

These papers are all numbered 8704 and so on. They are numbered when the certificate is issued from the Land Office. The certificate bears that number. When the application is filed in the State Land Office, it gets this number, and when the certificate is issued it bears that number in regular order.

Some of these numbers are in my handwriting. It is a puzzle to me. I can't make that out. That is ten years ago, and my recollection is not as bright as it used to be. They stamped those numbers on with a stamping machine at the Land Office. They are stamped after the application is filed in the Land Office. Some of the numbers on the top of the assignment are in my handwriting, and I could not have written the number in on the assignment until after the application had been filed in the Land Office and received its number. That shows that I wrote this assignment after the ap-

414 plication had been filed in the State Land Office and numbered there. I am quite positive about it. It could not be in any other way. The number could not have been put in the assignment until after the application had been filed with the Land Office and received its number, because it would have no number until then.

Now, in this case, the papers which Mr. Worthington has been showing to the witness (Application No. 8617), the witness's attention is called to the date, "26th of August, 1898." He says it is in his handwriting. He is asked if that was acknowledged before him on that date, or whether he put in a false date. He says he could not say.

"Q. Well, was it your custom to put in dates without regard to what the fact was, to certify that a man had appeared before you on a certain date when he did not? A. My recollection is that those were signed at the time the application was signed."

My best recollection is that this applicant, George E. Forster, appeared before me and acknowledged the application on August 26, 1898. The jurat to the assignment is filled out in my handwriting. That certifies that Forster appeared on August 27, 1898—the next day. I don't remember about that. My recollection is that those papers were mostly signed at the same time. I could not say they all were. If that is so, then it would be true, I suppose, if the acknowledgment of the application and the assignment are made before me by the same man at the same time, that one or the other of these certificates would be false. I have no recollection that I intention-

415 ally put in a false date in the certificates of these papers. I could not tell whether it would be done by accident. I don't think it would be done by design. That is my best recollection. If there was any mistake of that kind, it was not intentional. It has puzzled me how those numbers got in there. I have

some recollection of having those papers signed and acknowledged, it seems to me, in blank. That was not the way I did business generally. It was not intentional. It is a long time. I can't remember, but I intended to do my work right.

I don't know that I ever talked with Mr. McCornack about how I certified papers or what was done about filling blanks or anything of that kind. I just turned the papers over to Mr. McCornack. When we filed the application in the Land Office, all the blanks would be filled in, just as this is (indicating 8687 shown him). The assignment was a later consideration. Not necessary to file an assignment when you filed the application. When I turned this assignment, 8687, over to Mr. McCornack, the name "A. S. Baldwin," wherever it occurs, was not in it. I certified to that assignment, with a blank space in it where the word "A. S. Baldwin" appears. The name would be put in after it was turned over to Mr. McCornack. I never filed the assignment in the State Land Office with the name of the assignee blank. I got about forty applications, and I think I filed less than half in the Land Office myself. I have no positive knowledge of filing any, but I think I did.

"Q. And in the cases where you filed the application yourself in the State Land Office, whether they were few or many, what did you do about the notes for the deferred payments? A. The notes  
416 were signed at the time by the applicant."

In the other cases, where I did not file the applications in the Land Office, I turned the notes over with the applications to Mr. McCornack. In every case, the notes were signed. If I put in any dates other than those on which the parties appeared before me, it was to suit my own convenience, because I was away from home, and there were only certain hours when I could see Mr. McCornack at home. Did not do it at his suggestion. Did not inform him anything about this; so that if the date in certificate or acknowledgment is wrong, there was nothing to inform Mr. McCornack of it.

I saw two or three of these papers where my son had written a description in the papers. I can't account for my filling up the paper all right, and writing in the "Aug." and the "8" in 1898, and leaving the blank for the date, and don't know how the 26th day of August is apparently written with the same pen and ink that I used. I would fill up these papers wherever I happened to be.

It was my recollection when I stated to the District Attorney that William Hunter appeared before me only once. I can't say whether he appeared before me once or twice. I can't remember; but my recollection is that most of them appeared once. My recollection is not clear on the point of who and how many appeared before me twice. It would be my recollection that they all appeared only once, but I am not clear. I can't say as to any particular case that the  
417 party appeared twice. I can't give any explanation as to why

the affidavit to the application appears to be on the 26th of August, 1898, and the acknowledgment and the assignment on the 19th of September. Cannot give any explanation. Don't know anybody who can. I did not intentionally date the application and the assignment so as to make it appear that the papers were

executed before me on different days, when, as a matter of fact, they were executed only once.

I don't think Mr. McCornack or anybody else instructed me to make those dates different from what the fact was. When these papers were filed in the Land Office, they were the same, so far as these dates are concerned, as they are now, I suppose.

I have no reason to believe that in application 8708 Mr. Kiser did not appear before me on the dates named in the acknowledgment. Those parties I often saw. They were in my employ.

I think Mr. Neuhauser was the first man I spoke to of my connection with this matter, and Mr. Meindorf, a Government agent. That was a year ago last August. He came to me at Berkeley, where I was working at my trade. That is the first time I had been asked about it since. I told him all I knew. Didn't keep back anything. No suggestion was made to me that if I told everything I knew I would not be prosecuted. As a matter of fact, I have not been prosecuted by the State of Oregon or the United States.

I am now employed at the Mare Island Navy Yard, in the Government service; been in the Government service since last September. I asked for the place. I get \$3.84 a day.

418 "By Mr. WORTHINGTON:

"Q. Was any promise or suggestion made to you that if you would make a statement of any kind that you would not be prosecuted?  
A. No, sir.

"Q. As a matter of fact you have not been prosecuted at any time? A. No, sir."

*Benjamin F. Allen.*

Direct examination.

By Mr. PUGH:

I live at Santa Monica, California,—have lived there over three years; I am 79 years of age; lived at Los Angeles about 12 years before I went to Santa Monica.

I was appointed Forest Superintendent on July 1st, 1897, and held that position until the Forestry Department was transferred to the Agricultural Department between three and four years ago.

I have known the defendant Hyde 12 to 15 years—first met him in San Francisco. I don't know the defendant Benson or the defendant Schneider, or the defendant Dimond—I have seen all of them.

While I filled the position of Forest Superintendent and was living at Los Angeles, I had correspondence with the defendant Hyde. In a general way, my duty as Forest Superintendent was to supervise the different supervisors—also to give a certain amount of  
419 attention to the different rangers who were under the supervisors. I was also required to examine territory which had been probably proposed to be taken into forest reserves; and I did, at times, examine territory which was proposed for forest reservations, including certain territory in northern California.

Counsel for the Government then exhibited to the witness a large number of letters from the defendant F. A. Hyde, addressed to B. F. Allen at Los Angeles, California, which letters after being first proved to be genuine and to have been received by Allen in due course of mail, were read in evidence to the jury. Also certain reports from B. F. Allen to the Commissioner of the General Land Office, which reports and maps accompanying the same, after being proved to be genuine, were read in evidence and exhibited to the jury. The said letters, reports and maps cover a period from November 3rd, 1898, to June 3rd, 1902. They tended to prove that during the said period nearly all of said Allen's reports as United States Forest Superintendent, in the State of California, to the Commissioner of the General Land Office, at Washington, D. C., as to the advisability of establishing forest reserves in said State of California, and as to what lands of the United States should be included in such forest reserves, and as to what lands should be added to or eliminated from forest reserves theretofore established in said State, and the maps which accompanied said reports, were prepared for said Allen by the defendant Hyde or by his clerks under his (Hyde's) direction; and that during the said period said Allen kept said Hyde fully informed as to his proceedings as forest superintendent in said State. Some of the forest reserves to which said letters, reports and maps related, were the Trabucco Canyon Forest Reserve, the Pine Mountain and Zaca Lake Forest Reserve, the San Jacinto, the Lake Tahoe Forest Reserve, the Stanislaus Forest Reserve, and the Santa Ynez Forest Reserve, all situated in middle or southern California, and certain proposed forest reserves in northern California, namely, the Lassen Peake, the Cinnabar Springs, and others; and said letters, reports, etc., also tended to prove in other respects the allegations of the indictment as to the said Allen's connection with the transactions in the indictment charged.

The following are some of said letters and reports:

#### EXHIBIT 138.

“(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., Jan. 29, 1899.

“Col. B. F. Allen, c/o U. S. Land Office, Los Angeles, Cal.

“DEAR SIR: Herewith I send you my suggestions for your report to the Commissioner on the Tahoe Reserve. I send by express all of the papers which the Commissioner returned to you, and which I suppose you will want to send back to him. I think that this report will settle the matter.

“It seems to me, when I come to look at it again, that there was no reason for the exclusion of Range 15 E. My desire was to have that excluded, if possible; but when I come to see

how few entries there were in these townships, I could not find any reason for suggesting their exclusion, so I confined it to Range 14 E.

"Please let me know when you send on your report.

"Yours truly,

F. A. HYDE.

B. A. C.

Enc."

The WITNESS (resuming): I have a recollection of receiving from Mr. Hyde the suggestions as stated in this letter.

"By Mr. PUGH:

"Q. I now hand you what purports to be a report on the Tahoe Reserve, signed by yourself as Forest Superintendent, dated February 10, 1899, and ask you to examine it and ask whether that report was signed by you? A. It was.

"Q. From whom did you receive it? A. From Mr. Hyde.

"Q. What did you do with it? A. Sent it to the Department at Washington. I sent it to the Commissioner of the General Land Office."

I recognize the small map attached to the report and think I sent it to the Commissioner of the General Land Office with the report. To the best of my recollection, I got it from Mr. Hyde.

422 The report of February 10, 1899, was then read in evidence to the jury by counsel for the Government, (Exhibit 196) and is as follows:

"Address only the Commissioner  
of the General Land Office.

"LOS ANGELES, CAL., *Feb. 10, 1899.*

"Hon. Binger Hermann, Commissioner General Land Office, Washington, D. C.

"SIR: In December, 1897, I recommended the creation of a forest reservation embracing the region in California immediately west and south of Lake Tahoe, and I published a notice in certain papers in the vicinity of the said land that I had made such recommendation, and that all parties interested might submit their views relative thereto, to the General Land Office, by petition or otherwise.

"This notice brought out numerous remonstrances and protests, which you sent to me with your letter 'P' of June 6, 1898, and directed me to confer with the protestants and make a thorough investigation of the whole matter connected with the establishment of this reservation, and to submit a report covering all the points raised in the protests.

"In obedience to your instructions, I beg leave to submit the following report and recommendation.

*Petitions and Protests.*

"The American River Land & Lumber Company, a corporation, owns a large amount of timber land in El Dorado County, adjoining the proposed reserve, and possibly some therein.

423 "The reservation of the adjoining lands will undoubtedly be injurious to the future prospects of the corporation. It seems to have been the policy of the officers thereof not to purchase any large amount of timber land in advance of actual needs, trusting to the fact that the timber could be utilized only by that Company. In the future the corporation will be dependent for its timber upon the lands which it is proposed to reserve.

"The prosperity of the Company being thus threatened, its officers and friends have in every way opposed the establishment of the Reserve, and nearly, if not quite all of the opposition indicated in the protests has been inspired by them.

"There is no difficulty whatever, in securing the signature of local residents to remonstrances against any effort to reserve the public domain. Every such reservation prevents the cutting of, and traffic in, the timber, to the injury of local business interests, and naturally, merchants, lumbermen, lumber corporations and supervisors will protest against such withdrawals.

*Protests in Detail.*

"I notice first, one petition in eight parts, numerously signed by people who profess to be residents of El Dorado County and citizens thereof, and familiar with the nature of the regions described in the notice annexed to each petition.

424 "The signers object to the reserve on the ground that it would be an injury to the people without any benefit derived therefrom; that instead of the young timber being depleted under existing conditions, it is really rapidly increasing and thriving wonderfully under natural conditions; that it would be injurious to set aside these lands and withdraw them from homestead locations as to the patenting of the land increases the taxable property of the community; that the Republican party went into power pledged to protect the producers of wool, and that the proposed reserves would injure the wool interests of the county.

"This petition was prepared and circulated at the instance of the American River Land & Lumber Company, and presents no objections that cannot be urged against the whole policy of forest preservation.

"Taking into consideration the fact that the purpose of a reservation is to prevent corporations like this from destroying the timber, I see nothing in the petition that would lead me to modify my recommendation.

"I find also a protest signed by L. F. Hatfield, presented through Hon. Marion De Vries, in which it is urged that the American River Land & Lumber Company has expended a large amount of money

in improving the south fork of the American River and its branches, and that the reservation would interfere with the operation of the corporation. Mr. Hatfield is the attorney for the Company.

"No doubt the facts stated in the petition are true, but these would appear to be an argument in favor rather than against the reservation.

425 "Another protest comes from Erwin & Erwin, Placerville, directed to Hon. Marion De Vries. Their objection is that the reservation would interfere with the sheep men who pasture these hills in the summer months.

"I do not find this a valid objection, because one of the essential purposes of the reservation policy is to prevent the pasturing of sheep on the mountain slopes.

"Geo. H. Hilbert, Sheriff of El Dorado, objects that the reservation would be detrimental to the interests of El Dorado County.

"There is nothing to be said in answer thereto. It undoubtedly would be detrimental to local interests, but I apprehend that the prosperity of succeeding generations is also a matter for consideration.

"Another remonstrance comes from Wm. H. Mills of San Francisco. He encloses an article from the 'Sacramento Union,' strongly objecting to the reservation.

"Mr. Mills is the owner of the 'Sacramento Union,' and the article which he sends can be taken only as an expression of his personal views.

"In compliance with your order to confer with the contestants, I first visited Sacramento and saw Mr. L. F. Hatfield, who, as the attorney for the American River Land & Lumber Company, was one of the leaders in the opposition to the establishment of the proposed reservation.

"Mr. Hatfield stated to me that the principal interest of said Corporation was to have excluded from the reservation, townships 12, 13 and 14 North, Range 14 East. He expressed himself as  
426 satisfied that if these townships were excluded, there would be no further opposition to the reservation from the Corporation which he represented, and I inferred, although he did not expressly so state, that this meant that there would be no opposition from the signers of the numerous petitions which you sent me.

"I then proceeded to Placerville, County seat of El Dorado County, which is the place where the opposition to the reservation appeared to be most active. The principal works of the American River Land & Lumber Company are at Folsom, a few miles from Placerville, in the same county.

"At Placerville, I called on Mr. Geo. L. Burnham, who I learned was the person who drafted and through whose influence there was adopted by the Board of Supervisors a protest against the reservation, which protest is dated March 10, 1898.

"Mr. Burnham stated that all objections to the reservation, so far as he knew, would be obviated if townships 9 to 14 North, Range 14 East, were eliminated. He stated that much of the lands in these townships were taken by settlers; that there was considerable agri-

cultural land therein, and that it would be a great inconvenience to the people of the County to reserve the lands that were settled to the extent that these townships had been. He stated that he did not disapprove of reservations in general, but rather favored them, but claimed that in this case the reservation was too large, including land that was not needed for the purposes for which reservations are created.

427 "Mr. Burnham is an old citizen of El Dorado County, an ex-member of the Legislature, and a man of prominence and good standing. He is thoroughly acquainted with the people of the County. I do not think that he has any private interests to serve, and I was well impressed with his arguments and sincerity and his thorough knowledge of the situation.

"I also talked to various citizens, and I found the natural objections that would exist in any community, to the withdrawal from sale of a large body of land and the consequent decrease in taxable property, but I did not hear any objections that impressed me as well grounded.

"I found that the most objections arose from the reservation of townships nine to thirteen North, Range Fourteen East, the protestants having but little interest in opposing the remainder of the Reservation.

"When I had concluded my interviews as stated, I made another examination as to the quantity of lands that had been disposed of in Range fourteen East, with the following result:

"T. 9 N., R. 14 E., about 4000 acres disposed of.

"T. 10 N., T. 14 E., " 4150 " " "

"T. 11 N., R. 14 E., " 7500 " " "

"T. 12 N., R. 14 E., " 6400 " " "

"T. 13 N., R. 14 E., " 3200 " " "

"T. 14 and 15 N., R. 14, 15, 16 and 17 E. The Central Pacific Railroad Company owns the odd sections in all these townships; an area of about one hundred thousand acres.

428 "It does not appear to me to be good policy to create reservations that will include any considerable amount of land that has been disposed of to private parties.

"In the thirteen townships last named, 125,000 acres of land has been disposed of and would be subject to lien land privileges. I, therefore, recommend that Townships 9 to 13 N., inclusive, R. 14 E. and Townships 14 and 15 N., R. 14, to 17 inclusive E., be not included in the Reservation, because of the large amount of land owned in said townships by the Southern Pacific Railroad Company and others.

"I recommend that the following townships be reserved:

"T. 9, 10 and 11 N., R. 15, 16, 17 and 18 E.

"T. 12 and 13 N., R. 15, 16 and 17 E.

"I return herewith all of the documents which were sent to me with your letter of the 6th of June, 1898.

Very respectfully,

(Signed)

B. K. ALLEN,  
Forest Superintendent.



"As per instructions I herewith return all the papers sent me in this case."

(Above paper endorsed on back as follows)

"U. S. General Land Office Received Feb. 18, 1898. 75 20562 B. F. Allen, Forest Supt., Los Angeles, California—report of re-examination of the proposed Tahoe reservation, delivered February 10, 1899—with sundry papers and protests enclosed. Ack. Feb'y 18, 1899.

"Filed with case. March 25/99—Proclamation to Sec'y, for signature. Peyton."

429 Witness was then shown a map endorsed, "Map accompanying Agent Allen's report of December, 1897," and he testified that the same represents the land in the vicinity of Lake Tahoe; that it was sent to him by Mr. Hyde; and that he sent it to the Commissioner of the General Land Office. I did not make any part of this map.

I signed report on the Lake Tahoe reserve dated December —, 1897. I prepared the data but not the report. Mr. Hyde prepared the report, I think. I got it from Mr. Hyde.

The map and report were then offered in evidence (Exhibits 197 and 198). The map is the map referred to in the report.

#### EXHIBIT 148.

"(Written from Dictation.)

"F. A. Hyde,  
"415 Montgomery Street.

SAN FRANCISCO, CAL., *March 31, 1899.*

"Col. B. F. Allen, Los Angeles, Cal.

"DEAR SIR: I have your letter of the 29th, and answering your enquiry as to the status of the Tahoe Reserve, I am advised that the same was considerably reduced by the Commissioner after your report got there. I should judge that they consulted with the Geographical Department, for the Reserve is recommended as follows:

430 "All of 11, 12 and 13 N., R. 16 and 17 E.; all of 11 N. R. 18 E. lying west of the summit of the Sierra Nevada range of mountains."

This is the way it will be proclaimed. The Commissioner seems to have not herein followed his usual policy of reserving everything in sight.

Yours truly,

F. A. HYDE.  
B. A. C.

## EXHIBIT 167.

“(Written from Dictation.)

“F. A. Hyde,  
“415 Montgomery Street.SAN FRANCISCO, CAL., *Oct. 20, 1899.*

B. F. Allen, Esq., United States Land Office, Los Angeles, Cal.

DEAR SIR: I learn that the Geological people have recommended to the Commissioner the creation of an addition to the Tahoe Reserve, which shall embrace the lands on the East side of Lake Tahoe. It is not necessary for me to give you the townships, because it would not be well for you to know too definitely about it. What you do know is supposed to have come by rumor. I heard from Washington of this recommendation and I had a friend in Carson make some inquiries. First he went to the records to see if the land was taken.

He found that ninety-five per cent of it had been entered  
431 and was owned by the Central Pacific Railroad Company, or the syndicate of which D. O. Mills is the head, and that the timber had all been cut off and the owners had quietly got together and used their senatorial influence with the Geological Survey office and succeeded in obtaining this recommendation. The Commissioner ought to be warned and I think you are in a position to give him a little advice. It is just possible that coming from the source it does, the Commissioner might not take the trouble to look at the records. It is a scheme to exchange worthless lands for some valuable timber lands in Washington. I suggest, therefore, that you write a personal letter to Hermann, the form of which might be something like the enclosed rough draft of a letter.

Yours truly,

F. A. HYDE.”

As to this letter witness states that he received the rough draft of the letter to Commissioner Hermann therein referred to, but does not recollect whether he sent it to Commissioner Hermann.

I don't remember ever having published any notice in regard to the Lake Tahoe proposed Forest Reservation, before forwarding my reports to the Commissioner of the General Land Office. I did not ever after that publish such a notice of any other proposed forest reservations.

432

## EXHIBIT 142.

*Letter of February 21.*

“(Written from dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *Feb. 21, 1899.*

142.

Mr. B. F. Allen, Los Angeles, Cal.

DEAR SIR: I wish you would let me know what conclusion you came to about the advisability of excluding from the Pine Mountain Reserve 8 N. and 21 & 22 W., and 9 N. and 22 & 23 W. The petition is at the instance of Haggin & Tevis, who have been using that land for the grazing of sheep.

I am quite willing you should postpone the examination as long as you think best. I received your letter of the 20th in answer to mine, in which I sent a draft of a letter to the Commissioner about the proposed Lassen Peak Reserve, but you did not send me any letterheads.

I think you ought to be allowed to finish the examination of that reserve in view of the time and trouble that you have been to in connection therewith, and will put it to the Commissioner in such a way that he will probably so order.

I have sent to the Land Offices for plats showing the lands that have been disposed of, and will delay the matter until I get more data; then I will send a map of the proposed reserve, which will show the character of the land and the number of acres  
433 entered.

Yours truly,

F. A. HYDE.  
B. A. C.

Endorsed as follows: F. A. Hyde, Feb. 21/99.”

(EXHIBIT 144.)

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *March 10, 1899.*

144.

Col. B. F. Allen, Los Angeles, Cal.

DEAR SIR: I am busy at work getting data together for the proposed Lassen Peak Timber Reserve. I want it to go to the Commissioner in such shape that he can, if he desires, make the reservation

without further examination; and it is peculiarly well situated for that purpose. The field notes of the surveyor show the land to be heavily timbered, and the Land Office Reports show but few entries.

It is slow work getting data from the Land Office, which is the occasion of the delay. When the matter is ready, it will be in such shape that your report will be a credit to you.

Yours truly,

F. A. HYDE.  
B. A. C.

434

(EXHIBIT 145.)

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street,

SAN FRANCISCO, CAL., *March 22, 1899.*

145.

Col. B. F. Allen, Los Angeles, Cal.

DEAR SIR: Yours of the 20th is at hand. I mailed to you the Trabucco map several days ago; I suppose you have received it since you wrote your letter.

I am about ready to frame your report on the Lassen Peak Reserve, and I think I can do it in such a shape that the Commissioner will not require any further investigation. The fact is, that the field notes show conclusively the land to be of more than ordinary value for timber, and I have only one more report to get from the Land Office as to the entries. I have been getting this together very carefully, and it has cost me a good deal of money, but that is the only way to do business of this kind.

Yours truly,

F. A. HYDE.  
B. A. C.

Endorsed as follows: F. A. Hyde, March 22/99.

435

(EXHIBIT 147.)

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street,

SAN FRANCISCO, CAL., *March 27, 1899.*

147.

Col. B. F. Allen, Los Angeles, Cal.

DEAR SIR: In the matter of your report about eliminating T. 6 N., R. 13 and 14 W., and T. 7 N., R. 15 W., I do not wish to embar-

ness you at all, and if it is time for you to make your report, I am thankful to you for giving me time to protect myself.

You have not, however, informed me what conclusion you have come to regarding T. 6 N., R. 13 and 14 W., and T. 7 N., R. 15 W. My records show that these townships are all unsurveyed, so I have supposed there could be no settlers to amount to anything therein, and I cannot see why they should be restored. I judge that the unsurveyed lands are the very ones where there is the least trouble, and where the Department should look with the greatest disfavor upon restoration. There are no private lieu land rights therein. During this week, I shall have the report ready for you on the proposed Lassen Peak Reserve, and shall try to put it in such shape that the Commissioner will not ask for an investigation.

Yours truly,

F. A. HYDE.  
B. A. C.

Endorsed as follows: F. A. Hyde, March 27/99.

436

“(EXHIBIT 149.)

(Written from Dictation.)

“F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *April 4, 1899.*

“Col. B. F. Allen, Los Angeles, Cal.

“DEAR SIR: Herewith I send you draft of a letter (with copy) to the Commissioner on the subject of the proposed Lassen Peak Forest Reserve. It seems to me that nothing could be gained by further examination; it is one of those cases that carry conviction as soon as examined. The map, also enclosed, to be transmitted, gives all of the information that is necessary. It shows the amount of land sold in each township, which is inconsiderable, and the character of the land.

“If you conclude to adopt the report, please inform me thereof and the date when you send it on. It is dated the 6th, which will give you time for consideration, as there is nothing to do except merely to read and sign it.

Yours truly,  
(Signed)

F. A. HYDE.

Enc.

Endorsed as follows: F. A. Hyde. Apr. 4/99.”

437      The WITNESS (resuming): I received the draft of report on the Lassen Peak Reserve that was mentioned in that letter from Mr. Hyde, and I transmitted that report to the Commissioner of the General Land Office, signing it before I sent it.

Thereupon, the witness identified as the report referred to, a paper produced by the counsel for the Government, dated March 6, 1899, and the same was read in evidence to the jury by counsel for the Government, as follows:

“(EXHIBIT 193.)

“Special Service  
Division.

P.

193.

Address only the Commissioner  
of the General Land Office.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
LOS ANGELES, CAL., *March 6, 1899.*

“Hon. Binger Hermann, Commissioner General Land Office, Washington, D. C.

“SIR: By letter “P” of July 14, 1898, you directed Mr. Grant I. Taggart, Assistant Special Forest Agent, to make an examination for the purpose of ascertaining the advisability of creating one or more forest reservations in the mountainous part of the territory from Redding north to the south line of the State of Oregon.

“By letter ‘P’ of September 3, 1898, you transmitted a 438 copy of said letter to me, directing me to execute the said order, as it was found necessary to order Mr. Taggart to San Jacinto. In compliance therewith, I recommended the creation of a small reservation on the north boundary of the State, but before I could fully execute your instructions, winter came on and further work was impossible.

“From such investigation as I have made, I doubt the wisdom of  
(Underlining in blue pencil.)  
an extensive reservation in the territory immediately north of Redding. The lands are mostly within the limits of the Oregon and California Railroad grant; the townships have been generally surveyed, and the even numbered sections have been purchased under the timber law, and denuded of their timber. The streams that head in that vicinity are not used for irrigation purposes, and the lands are not used for sheep or other pasturage. I do not find that there is any public sentiment in favor of such a reservation; but, on the contrary, all of the local residents with whom I have conversed are opposed thereto.

“I take the liberty, however, at this time to call your attention to a tract of country lying to the east of Redding, which I have partially examined, and as to which the conditions seem to warrant the creation of a forest reservation. I had intended to call your attention thereto at an earlier date, but my time has been so fully occupied that I have not heretofore been able to collect the data for even a preliminary report, nor to formulate my recommendation. I am,

however, now prepared to recommend and do recommend that the following townships be proclaimed as a public forest reservation, to wit:

- 439      T. 24 N., R. 6, 7, and 8 E.  
           E.  $\frac{1}{2}$  of T. 25 N., R. 5 E.  
           T. 25 N., R. 6, 7 and 8 E.  
           T. 26 N., R. 5, 6, 7 and 8 E.  
           T. 27 and 28 N., R. 4 and 5 E.  
           T. 29 N., R. 4, 5 and 6 E.  
           T. 30 N., R. 4, 5, 6, 7 and 8 E.  
           T. 31 N., R. 4, 5, 6, 7, 8, and 9 E.  
           T. 32 and 33 N., R. 4, 5, 6, 7, 8, 9 and 10 E.  
           T. 34 N., R. 4, 5 and 6 E.  
           E.  $\frac{1}{2}$  of T. 35 N., R. 4 E.  
           T. 35 N., R. 5 and 6 E.

"I recommend that the said reservation be called the *Lassen Peak* Forest Reserve.

I have made a superficial examination of the said township on the ground, and also the field notes of the surveys thereof, together with the records of the United States Land Offices, which, taken in connection with my examination, seem to warrant a recommendation from me that the reservation be created without further investigation. It is decidedly the best body of timber remaining in the State of California, either surveyed or unsurveyed, especially, taking into consideration the size of the tract. It is all, with scarce an exception, heavily timbered. There are no settlements of any extent within its limits, but it is largely used by sheep and cattle men for summer pasturage. It forms the head waters of the North Fork and

440      Feather Rivers, MillCreek, DeerCreek, and all the large tributaries of the Pitt and Sacramento Rivers. On the eastern side, it embraces the head waters of the Susan River, and other streams emptying into the Addington, Eagle and Honey Lakes. This eastern watershed is valuable, and should be preserved for the irrigation of the lands in the eastern part of Lassen County; particularly, as it drains into Eagle Lake, which is the main source of supply.

"I regard it as essentially desirable that this immense body of virgin timber should be preserved, for as the timber is used up in other parts of the State, railroads will be built into it and saw mills constructed. The timber is not only heavy in places, but the quality makes it particularly valuable, as it is largely sugar-pine, which is found only in limited quantities in California. There are no towns, railroads or extensive settlements within the boundaries of the tract, nor is there any considerable quantity of farming land.

"I was so much impressed with the advantages of reserving these lands, that I procured from the Land Offices, statements of the amount of lands to which the United States had parted with its title in each township. Then, I obtained extracts from the field notes of the surveys, and the data thus collected is found on a plat, enclosed. The figures in red indicate the lands disposed of, and it appears therefrom that the United States owns the bulk of the lands.

"The surveyors' reports show the land to be covered with timber.

441 The peculiar advantage of this reserve will be, that this is the only one so far created in California where the timber is of heavy, merchantable quality, and practically untouched.

"I am told that during the year 1898, a petition to reserve a part of this tract was extensively signed by citizens residing to the west thereof, but that some of the sheep men who used the land for summer pasturage found out what was proposed, and had the petition suppressed.

"I do not see that anything can be gained by further examination. The field notes show the character of the land to be that which is suitable and desirable to be reserved, and the Land Office records indicate that the United States still owns the bulk of the lands.

Very respectfully,  
(Signed)

B. F. ALLEN,  
*Forest Superintendent.*

"Enc.

"Endorsed in pencil: W. J. B. 5/7-03.  
" in red ink: 1899 44039-2."

The WITNESS (resuming): Before signing that report, I did not personally examine the lands referred to in the report. I did make an examination in the United States Land Office with respect to this reserve, with a view to ascertaining what lands were taken up within the proposed reserve. That was all the examination I made with respect to the proposed reserve before signing this report and sending it to the Commissioner of the General Land Office—that and conversing with Mr. Hyde, relative to his knowledge of the region, was all.

442 Witness also identified a plat which was shown him by counsel for the Government as the plat of the proposed Lassen Peak Forest Reserve, referred to in the letter from the defendant Hyde to him of April 14, 1899, and the same was offered in evidence by counsel for the Government.

The WITNESS (resuming): As to that letter being dated April 4th and the report March 6th, it has been so long ago I cannot give any definite idea, I don't believe; if I have any at all, it is that it ought to be April; my idea would be it ought to be April 6th—that is my best recollection.

Letter from B. F. Allen to the Commissioner of the General Land Office, Exhibit 348, was then introduced in evidence as follows:



"Special Service  
Division  
P.

Department of the Interior,  
General Land Office.

LOS ANGELES, CAL., May 4, 1899.

Address only the Commissioner of the General Land Office.

Hon. Commissioner G. L. O., Washington, D. C.

SIR: I have the honor to acknowledge the receipt of your letter P. J S P. H H J/W D H 1898, 106,923

" 115-178

1899 44-639 dated April 28—

1899—Subject Proposed Forest Reserves in Northern California, advising me that Supervisor Grant I. Taggart has been directed to proceed at once to complete his examination and report upon lands suitable for forest reservations in the Northern portion of California.

Very respectfully,

B. F. ALLEN,  
*Forest Supt."*

WITNESS (resuming): My recollection is that I informed Mr. Hyde of the receipt of the letters mentioned in my said letter to the Commissioner.

Counsel for the Government then offered in evidence the following letters of instruction to B. F. Allen, and to Grant I. Taggart, relating to the examination of lands for proposed forest reserves in northern California. Said letters are as follows:

EXHIBIT 349.

*Letter of April 28, 1899, to B. F. Allen.*

"P"	1898-106,923	1899-44,039	H. H. J.
J. S. P.	" 115,178		W. D. H.

Department of the Interior,  
General Land Office.

WASHINGTON, D. C., April 28, 1899.

Address only the Commissioner of the General Land Office.

Proposed Forest Reserves in Northern California.

Mr. B. F. Allen, Forest Superintendent, Los Angeles, Cal.

SIR: You are advised that, by letter of even date herewith,  
444 Forest Supervisor Grant I. Taggart has been directed to proceed at once to complete his examination and report upon

lands suitable for forest reservations in the northern portion of the State of California; the completion of which examination was postponed under instructions given you in my letter of January 21, 1899.

Very respectfully,

BINGER HERMANN.

*Commissioner.*

EXHIBIT No. 350.

*Letter of April 28, 1899, to Grant I. Taggart.*

"P" 1898-106,923

H. H. J.

J. S. P. " 115-178

1898-44,039

W. D. H.

Department of the Interior,  
General Land Office.

WASHINGTON, D. C., April 28, 1899.

Address only the "Commissioner of the General Land Office.

Proposed Forest Reserves in Northern California.

"Mr. Grant I. Taggart, Forest Supervisor, San Jacinto, California.

"SIR: By letter of January 21, 1899, Superintendent B. F. Allen was instructed to direct you to postpone until the first of April the completion of your examination respecting regions suitable for forest reservations in the northern portion of the State of California. It is now desired that you will take up this work at once, and proceed to carry out the instructions given you in the matter in my letter of July 14, 1898.

"In doing so, you will be careful to include, among the regions examined, the country surrounding Mount Shasta, and also the region lying between Goose Lake and Surprise Valley, to which you made special reference in your letter of October 15, 1898. Make careful report upon each of these regions.

"It is also desired that you will extend your examination to include the general region of country lying between Redding and Susanville and extending from Township 23 North to the 7th Standard Parallel North. Should you decide to recommend a reservation in this region, you will be careful to ascertain from the local land office the status of the lands and endeavor to exclude from the limits of the proposed reserve, as far as possible, lands which have been disposed of by the Government.

Should you recommend the creating of any reservations, you will make each proposed reserve the subject of a separate report, and be careful, in each case, to cover, in detail, each of the following points:

"1. The density, character and size of the timber.

446

"2. The character of the land, whether it is steep, rough or mountainous, and how much, if any, is susceptible of cultivation or adapted to grazing.

"3. The probable number of actual settlers on the lands, and when they established themselves there; whether they are there seeking permanent homes, or simply with a speculative intent to obtain the timber or some other prospective advantage; and whether any interests involved will be injured by reserving the lands.

"4. Whether the lands are better adapted to forest uses than other purposes; that is, whether the preservation of the timber, for present and future use, and as a water conservative, constitutes the foremost consideration in connection with the lands.

"In reporting upon this point, you should show whether the conditions are such as require the preservation of a part or all, of the timber, keeping in view the forest reservation policy of this office to supply present and future need for timber by providing for the use of matured trees which can be cut without detriment to the reserves. You will endeavor to make it generally understood that it is not intended to withhold from the general use of the public the areas covered thereby, and practically lock up their resources, but that the intent is to maintain and utilize their forest products in a state of the highest continued production for the direct benefit of the people dependent thereon to supply local demands within the state in which the timber grows.

447 "You will also bear in mind that it is frequently as important to embrace within a reservation lands which are covered with a sparse growth of trees, and undergrowth serving as a direct water conservative, as it is in other localities to include densely wooded areas. Where irrigation is a serious question, the matter of insuring conditions favorable to continuous water flow, becomes frequently the leading feature in a forest reservation. You should, accordingly, in every case, consider very carefully the bearing which the lands have upon the question of water supply.

"5. You should, in each case, report all other facts which may have a material bearing upon the questions involved in considering the advisability of setting the lands apart for forest reservation purposes.

"6. You should describe the lands to be reserved by the lines of survey, or if they are unsurveyed, by the lines as they will be when the official surveys are extended. You should also accompany your recommendation with a diagram showing the lands which you deem should be reserved.

"7. In addition to making a personal examination of the lands, you should interview residents of the vicinity who are familiar with the lands in question and obtain statements from them covering the above points, and forward the same for consideration in connection with your report.

448 "8. You should also, in each case, report the newspaper, of general circulation, nearest the land in question in which it is most desirable that a notice of the proposed reserve should be published, in order to insure all parties, whose interests may be affected, having timely notice of the contemplated withdrawal of the lands.

Very respectfully,

BINGER HERMANN,  
*Commissioner.*"

## EXHIBIT #150.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *May 8, 1899.*

150.

B. F. Allen, Esq., c/o U. S. Land Office, Los Angeles, Cal.

DEAR SIR: I am much obliged to you for your letter of the 4th. I send you herewith all of the original Department letters which you left here. I am very sorry that the Department did not designate you to take that examination. Can you think of any way by which I can be brought into personal relations with Mr. Taggart? I can be of a great deal of assistance to him. Do not fail to notify me when he starts on his trip, and especially keep me advised of his movements and report.

I would suggest that you tell him that I had something to do as attorney for the parties who prepared the petition, and get  
449 him to come to me for information. I mean the original petition which was suppressed; then I can direct him how to proceed and send a man with him. What is his post-office address and where can he be found now?

Yours very truly,

F. A. HYDE.

## EXHIBIT 151.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *May 12, 1899.*

151.

Mr. B. F. Allen, c/o U. S. Land Office, Los Angeles, Cal.:

I send you herewith a map I have had prepared at your suggestion, showing the lands proposed to be reserved around Lassen Peak. It explains itself, and if you will give it to the agent who is to make the examination, I think he will find it useful.

You can explain to him that to the west of this Reserve the lands run into the limits of the C. & O. Railroad, and it is not desirable to give away so much lien land rights, and that the same is the reason why you do not recommend the inclusion of the lands to the east.

Yours truly,

(Signed)

F. A. HYDE.

450 The WITNESS (resuming): The map here shown me is the same as the one referred to in the last mentioned letter, and I forwarded the same to the Department at Washington. The map was introduced in evidence.

## EXHIBIT 152.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *May* 23, 1899.

Mr. B. F. Allen, care U. S. Land Office, Los Angeles, Cal.

DEAR SIR:

\* \* \* \* \*

Mr. Taggart has not yet appeared at the Surveyor General's office; possibly he found out that Surveyor General Gleaves was out of town.

Yours truly,

F. A. HYDE,  
Per F."

## EXHIBIT # 155.

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *June* 13, 1899.

451 B. F. Allen, Esq., U. S. Land Office, Los Angeles, Cal.

DEAR SIR: Will you please obtain for me from the Land Office, a complete abstract of the filings and entries of the following townships:

Township 4 North, Ranges 24 to 28 West, inclusive.

Township 5 North, Ranges 25 and 32 West, inclusive.

I do not like to send direct for it because it might show that I was advised of what is going on. Get it as if for yourself and I will send the money for it. I want to know simply those claims that are final, giving the description of the land and the entrymen.

Did you send on the report in the proposed Santa Ynez Reservation. Have you heard anything from Taggart. Please let me know just as soon as you have any information relative to other reservations.

Yours truly,

F. A. HYDE.

The above letter is endorsed on the back, in ink, as follows:

"F. A. Hyde,  
June 13/99."

452

## EXHIBIT 158.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *July 10, 1899.*

B. F. Allen, Esq., U. S. Land Office, Los Angeles, Cal.

DEAR SIR: I am wondering if Mr. Taggart has returned. Please give me the earliest information as to how matters are progressing. I notice that he does not do business in the same way that you have done it, and the consequence will be that he will have considerable trouble. The local people are always opposed to the withdrawal of a large quantity of land from the market. The vicinity as to which you made a report, is an ideal place for forest reserve, and that is the very reason why it will be opposed. It is virgin timber land, but scattered throughout the tract is found considerable land which is suitable for cattle and sheep grazing. These lands have been free to the occupants for many years, and they will object very strongly to the government reservation. Taggart, it seems, went among the people, told them everything he intended to do, and asked their opinion. Of course the majority of them were opposed to it, and some of them have considerable influence. I know of some large stock ranges where the occupants have gotten rich from grazing on public lands. It is absurd to ask them what they think about the withdrawal of these special privileges.

453

Yours truly,

F. A. HYDE."

## EXHIBIT No. 164.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

A. SAN FRANCISCO, CAL., *Aug. 11, 1899.*

B. F. Allen, Esq., United States Land Office, Los Angeles, Cal.

DEAR SIR: Mr. Taggart is in San Francisco today and I will see him, so that it will not be necessary for you to telegraph to me his arrival in Los Angeles as I previously requested.

Yours, truly,

F. A. HYDE,  
A."

The WITNESS (resuming): I recollect the fact that Mr. Taggart went into Northern California, but I could not give the date. I saw him just before he went to Northern California, either on his return

or soon afterwards. His headquarters were at San Jacinto,  
454 in southern California. My recollection is that I sent to Mr.  
Hyde a copy, of a memorandum containing information furnished me by Mr. Taggart as to what his recommendations would be.

Four slips of paper, each containing memoranda of townships and sections, one entitled, "Proposed Mt. Shasta Forest Reserve," one entitled "Warner Mountain and Goose Lake Forest Reservation," another entitled "Proposed Cinnabar Springs and Mt. Sterling Forest Reservations in California and Oregon," and another entitled "Proposed Diamond Mountain Forest Reservation," were then shown to the witness and he stated that he received the same from Supervisor Grant I. Taggart. They are the memoranda of which I sent copies, or information of the contents, to Mr. Hyde. My recollection is that I sent copies of these memoranda to Mr. Hyde.

They were numbered respectively, Exhibit 373, Exhibit 374, Exhibit 375, and Exhibit 376, and introduced in evidence.

#### EXHIBIT No. 373.

*"Proposed Cinnabar Springs and Mt. Sterling Forest Reservation."*

In California and Oregon:

In California.

Tps. No. 12 N. R. 4-5-6-7 & W.  $\frac{1}{2}$  8 E. H. B. M.  
 " " 13 " " 3-4-5-6-7 & W.  $\frac{1}{2}$  8 " "  
 " " 14 " " 3-4-5-6-7 & W.  $\frac{1}{2}$  8 " "  
 " " 15 " " 4-5-6-7 & W.  $\frac{1}{2}$  8 " "  
 " " 16 " " 4-5-6-7 & W.  $\frac{1}{2}$  8 " "  
 " " 17 " " 4-5-6-7 Secs. 5-6-7-8-17-18-19-20-29-30-31-32 &

455

32 & W.  $\frac{1}{2}$  Secs. 4-9-16-21-28 & 33 Tp. 8 E.  
H. B. M.

" " 18 " " 5-6-7-8-17-18-19-20-29-30-31-32 & W.  
 $\frac{1}{2}$  Sec. 4-9-16-21-28 & 33 Tp. 8 E. H. B. M.

Tps. No. 42 N. R. 11 & 12 W. M. D. B. M.

" " 43 " " 11 & 12 "

" " 44 " " 11 & 12 "

" " 45 " " 8-9-10-11 & 12 "

" " 46 " " 8-9-10-11 & 12 "

" " 47 " " 8-9-10-11 & 12 "

South  $\frac{1}{2}$  Tp. No. 48 " " 8-9-10-11 & 12. "

In Oregon.

Townships N. 38, S. R. 1-2-3-4-5-6-7 & 8 W. & W.  $\frac{1}{2}$  1, E.

" " 39 S. R., 1 W. (less Sects. 25 & 36) 2-3-4-5-6-7 & 8  
W. and Sects. 4-5-6-7-8-9-16-17-18-19-20 & 21 = 1 E.

" N. 40 S. R., 1 W. (Less Sects. 1-12 & 13) 2-3-4-5-6-7 & 8  
W. and Sections 19-20-21-28-29-30-31-32 & 33 1 E.

South  $\frac{1}{2}$  " N. 41, S. R., 1-2-3-4-5-6-7 & 8 W. & Secs. 4-5-6-7-8-9-16-  
17 & 18 E. W., B. M. Oregon.

456

## EXHIBIT No. 374.

*Proposed Warner Mountain & Goose Lake Forest Reservation.*

Townships	34 S. R. 16-17 & 18	W. B. M.
"	35 S. R. 16-17-18 & 19	"
"	36 S. R. 16-17-18-19-20-21 & 22	"
"	37 S. R. 16-17-18-19-20-21 & 22	"
"	38 S. R. 16-17-18-19-21 & 22	"
"	39 S. R. 16-17-18-21 & 22	"
"	40 S. R. 16-17-18-21 & 22	"
"	Frac. " "	"
"	41 S. R. 16-17-18-19-21 & 22	"

Oregon Line:

All Fractional.

Township	48 N. R. 10-11-12-13-15-16 & 17	M. D. B. M.
"	Frac.	
"	47 N. R. 10-11-12-13-15-16 & 17	"
"	Frac. Frac.	
"	46 N. R. 10-11-12-13-15-16 & 17	"
"	45 N. R. 10-11-12-13-15-16 & 17	"
"	Frac.	
"	44 N. R. 14 & 15	"
"	43 N. R. 14 & 15	"
"	42 N. R. 14 & 15 Frac. Frac.	"
"	41 N. R. 14-15 & 16	"
"	40 N. R. 14-15 & 16	"
"	39 N. R. 14-15 & 16	"

## EXHIBIT No. 375.

*Proposed Mt. Shasta Forest Reserve.*

34 N. R.	1-2-3-4-5-6-7-8-9-10-11 & 12	W. M. D. M.
35 " "	1-2-3-4-5-6-7-8-9-10-12 & 12	" " " "
457		
36 N. R.	1-2-3-4-5-6-7-8-9-10-11 & 12	W. M. D. M.
37 " "	1-2-3-4-5-6-7-8-9-10-11 & 12	" " " "
38 " "	1-2-3-4-5-6-7-8-9-10-11 & 12	" " " "
39 " "	1-2-3-4-5-6-7-8-9-10-11 & 12	" " " "
40 " "	1-2-3-4-5-6-7-E. $\frac{1}{2}$ 8-W. $\frac{1}{2}$ 9-10-11 & 12	" " " "
41 " "	1-2-3-4-5-6-7-E. $\frac{1}{2}$ 8-10-11 & 12	" " " "



## EXHIBIT No. 376.

*Proposed Diamond Mountain Forest Reservation.*

Townships 25 N., R. 12-13-14-15-16 and 17 E.

“ 26 N., R. 12-13-14-15 East, excepting Sec. 1.

“ 26 N., R. 16 East, excepting Sections 1 to 6, inclusive, 8 to 12, inclusive, 13 to 16 and 22 to 24, inclusive, and Sections 31 and 32 S. E.  $\frac{1}{4}$  Sec. 16, S. W.  $\frac{1}{4}$  Sec. 15, N.  $\frac{1}{2}$  and S. E.  $\frac{1}{4}$  Sec. 23, Sections 24 and 25, and unsurveyed land in Tp. 26 N., R. 17 E.

Townships 27 N., R. 9-10-11-12-13 and Sections 6-7-18-19-30-31-32-33-34-35-36, S. W.  $\frac{1}{4}$  Sec. 26-27-28-29-20-21, W.  $\frac{1}{2}$  and S. E.  $\frac{1}{4}$  Sec. 17 and S. W.  $\frac{1}{4}$  Sec. 8.

Township 28 N., R. 9-10-11-12 E. and Sections 4-5-6-7-8-9-16-17-18-19-20-21-22, W.  $\frac{1}{2}$  and S. E.  $\frac{1}{4}$  26-27-28-29-30-31-32-33-34-35 and 36.

Township 29 N., R. 9-10-11 E. and Sections 6 and 7, S.  $\frac{1}{2}$  of Sections 14-15-16-17- and N. W.  $\frac{1}{4}$  17 and 18 and 19 to 36 inclusive.

Townships 30 N., R. 9-10 and 11 East.

458

EXHIBIT No. 153.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., May 26, 1899.

B. F. Allen, Esq., c/o U. S. Land Office, Los Angeles, Cal.

DEAR SIR: This morning I received the petition for the reservation of the Santa Ynez Range. I have copied the description and return the papers to you. I agree that it is a desirable place for a Forest Reserve. I would suggest that you call it the Santa Ynez Reservation and not make an addition to the Pine Mountain. I do not see that the agent has suggested a name, neither do I find any map to accompany it. If you will hold the petition for a few days I will send you a nice map. I would further suggest that you send it to Washington with a strong letter of recommendation.

So far as Norway is concerned, I do not think that he is of sufficient importance to hold up a petition of this kind. He is doing a little locating in that vicinity, but it amounts to nothing. I should not consider him in the matter at all.

In answer to the letter which he wrote to Mr. Craw-haw, you can state that a location or claim of any kind which exists at the date of a Forest Reserve, will be carried into final title; so Mr.

459 Norway need have no concern about his lieu location.

I notice that the proposed Reserve is made to terminate at the boundary line of Ventura County on the east. Now, so far as the Forest Reserve is concerned, it is just as useful in Ventura County

as it is in Santa Barbara County, and the fact that the citizens of Ventura County are getting up a petition, is no reason why the Government should stop at a County boundary, if there is land adjoining the same. I will carefully examine the maps and will include in one that I shall make the public land extending east into Santa Barbara Co., until it encounters some grant or other obstacle and when you make your report you can refer to the fact that the petition asks for the Reserve only in Santa Barbara Co., but that you see no reason why it should stop there. Of course, I have not looked into the matter and there may be some reason that I do not understand. For instance, the mountains may end at Ventura County, but whatever the facts are I will investigate and give you full particulars.

I return all of the papers and renew my suggestion that you hold the matter until a few days that you may get the map I will make. I thank you very much for giving me the opportunity of seeing the papers.

Yours very truly,

F. A. HYDE.

Enc."

460 The WITNESS (resuming): I received from Mr. Hyde a map of the Santa Ynez proposed forest reserves referred to in the last mentioned letter. It is the map containing what was proposed to be included in the Santa Ynez Reserve. It came to me by mail from Mr. Hyde. I took action on this proposed reservation after I received this map. I sent the map with the other papers to the Department.

EXHIBIT No. 154.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *June 3, 1899.*

Mr. B. F. Allen, United States Land Office, Los Angeles, Cal.

DEAR SIR: I send you herewith a map of the land proposed to be included within the Santa Ynez Forest Reservation, to give the Commissioner a clear idea of what is wanted. The petition asks for the Reservation to the Santa Barbara County boundary, but if it was to stop at the County Boundary there would be a little strip left out, so it is made to include Township 4 North Range 24 West, which leaves the new Reservation abutting against the Pine Mountain and Zaca Lake Reservation. I send you herewith the proper description for the new Reserve.

Yours truly,

F. A. HYDE."

461 At this point counsel for the Government introduced in evidence a letter of instructions from the Commissioner of the General Land Office to B. F. Allen, relating to the proposed Santa Ynez forest reservation. It was dated June 17, 1899, and contained instructions to said Allen to make "a personal examination and report upon the advisability of withdrawing, for forest reserve purposes, the region of country traversed by the Santa Ynez Mountains Range"; following which were certain general instructions as to the manner of conducting examinations "with the view to the creation of forest reserves, or the addition to or elimination from existing reserves."

"EXHIBIT 156.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *June 16, 1899.*

B. F. Allen, Esq., United States Land Office, Los Angeles, Calif.

DEAR SIR: Your favor of the 14th at hand. Please order the Abstract, no matter what it costs. I hope they don't know in the Land Office about the proposed Reservation; keep it as quiet

462 as you can. I want the Abstract to be full and complete.  
Yours truly, F. A. HYDE."

EXHIBIT 157.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *June 30, 1899.*  
157.

Mr. B. F. Allen, United States Land Office, Los Angeles, Cal.

DEAR SIR: I have your kind favor of the 28th sending abstract of title from Mr. Pike. Herewith please find my check for \$25. the cost thereof. It is made in your favor and you had better collect it and give it to him.

Yours truly,  
Enc.

F. A. HYDE."

## EXHIBIT 159.

(Written from Dictation.)

F. A. Hyde, ,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *July 18, 1899*

463 B. F. Allen, Esq., United States Land Office, Los Angeles, Cal.

DEAR SIR: I received your letter stating that you were called upon to examine the proposed Santa Ynez Reservation and I desired a map thereof. I have had a small map made, which I enclose herewith. The proposed Reservation is colored yellow. You will see that it is entirely enclosed with Spanish grant, except where it touches the present Pine Mountain Reservation. I do not know whether this is sufficient for your purpose, but I think it will be.

Yours truly,

F. A. HYDE."

## EXHIBIT 160.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *July 22, 1899.*

B. F. Allen, Esq., Los Angeles, Cal.

DEAR SIR: I have your letter of July 20th. the first part of next week I will send you plats showing all the lands in the Santa Ynez Reservation.

Yours truly,

F. A. HYDE,  
Per E. S."

464

## EXHIBIT 161.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *July 27th, 1899.*

B. F. Allen, Esq., U. S. Land Office, Los Angeles, Cal.

DEAR SIR: I send you herewith small plats showing all of the entries within the proposed Santa Ynez Forest Reservation. The plats were started with colored lines around the entered lands, but toward the close I told the clerk that it was a waste of time and that a cross mark was just as good.

Yours truly,

F. A. HYDE."

The WITNESS (resuming): Counsel for the government then exhibited to witness what purported to be his report to the Commissioner of the General Land Office on the proposed Santa Ynez forest reserve, dated July 28, 1899, with a map attached and the witness stated that he had forwarded the report to the Commissioner of the General Land Office accompanied by the map; that he did not make the map, but got it from Mr. Hyde; that the proposed reservation is colored yellow on the map.

Both the map and plat were introduced in evidence.

Thereupon counsel for the Government introduced in evidence a letter from the Commissioner of the General Land Office 465 to B. F. Allen, dated Aug. 18, 1899, which letter acknowledged the receipt of Allen's report of July 28, 1899, upon the proposed Santa Ynez Forest Reserve, and after stating that an examination of the Tract Books in the General Land Office showed many entries of record in the region referred to, directed said Allen to "proceed to the region in question with as little delay as possible, and made a careful personal examination of each and every entry which the records of the local Land Office showed to have been made within the limits of the proposed reserve," and to make report of the result of such examinations.

WITNESS (resuming): I furnished letter heads to Mr. Hyde on which to prepare the reports which I have stated were prepared for me or sent to me. The letter heads were stamped "Los Angeles," I think, with a rubber stamp.

Counsel for the Government then exhibited to witness what purported to be his report to the Commissioner of the General Land Office, dated August 31, 1899, consisting of the front page in handwriting and a number of other pages in typewriting, and witness stated that he had forwarded that report to the Commissioner of the General Land Office; that the front page was in his handwriting; that the stamp "Los Angeles, California" on each of the other sheets comprising the report was his rubber stamp; that he prepared the data, and the report was written by a typewriter in Mr. Hyde's office, and sent to him, that the fact that the report was not signed by him he supposes was an accidental omission.

466 The report was offered in evidence, and is as follows:

#### EXHIBIT No. 369.

Special Service Division.

P.

Department of the Interior,

General Land Office,

LOS ANGELES, CAL., Aug. 31, 1899.

Address only the Commissioner of the General Land Office.

MR. COMMISSIONER: I take the liberty of mailing this to your residence, in the hope that it may be certain to reach you personally and with as little delay as possible.

Sincerely yours,

B. F. ALLEN.

I have just returned from the Mountains in the San Gabril reserve. Where we have the first forest fire of the season. I slept last night with Mr. Bender at the scene of the fire. It has been a hard fire to manage; I had to call considerable assistance, owing to the dryness of everything and accompanied by winds—this morning when I slept, it looked as though we had it under control.

Department of the Interior,

General Land Office,

LOS ANGELES, CAL., *August 31, 1899.*

Hon. Binger Herman, Commissioner General Land Office, Washington, D. C.

SIR: Since acknowledging receipt of the Hon. Acting Commissioner's letter of August 18, 1899, I have carefully re-examined the same relative to the proposed Santa Ynez Reserve, in which I am instructed.

"To proceed to the region in question with as little delay as possible and make a careful, personal examination of each and every entry which the records of the local land office show to have been made within the limits of the proposed reserve."

also to submit a list showing all entries and other settlement claims, those made in good faith and those fraudulent, etc.

I beg leave to invite your attention to the following touching the above matter:

1. To proceed to the place and make the "personal examination" as per said instructions would require several weeks, possibly months, to properly compass the work, traversing a mountain range of sixty five miles along each side, (across which there is but one road, viz: the San Marcos), passing over cattle paths or primitive trails, to locate and determine the status of the several claims as stated would necessitate a prolonged absence from my office at a most critical period of the fire season when my presence here is so essential, and when the situation might become very precarious in the event of my enforced absence investigating the character of the said claims referred to. In my humble judgment this would be a very inopportune time for me to be away from my post and located in the mountains, practically shut out from the mails, telephones and telegraph facilities.

468 2. Permit me to also state that my report submitted July 28th, was in my judgment very exhaustive in all the substantial particulars. Indeed, Mr. Commissioner, I think I have never made a more carefully detailed statement of existing facts (especially when you consider the limited area) in any of the reports I have heretofore submitted respecting the creation of new reserves or additions. Besides this, it was preceded by a complete and very carefully prepared report to Forest Supervisor B. F. Crawshaw, who has resided for the past year right under the shadow of the Santa Ynez mountain range, and who I know is perfectly familiar with all matters

pertaining thereto, and who has set out all the salient points concerning the said range.

3. Perhaps no stronger petition has yet been presented and of a more representative character, embracing among its many signers the Judge of the Superior Court, the County Supervisors, the Chamber of Commerce, all the County officials, the press, the banks, settlers, ranchers, business men, etc., representing all the material interests of that section.

4. It is represented to me that the said petitioners are very anxious to have the matter consummated as early as possible consistent with the public interests in order to be protected against the possibility of danger from fire which is a constant menace. If the withdrawal is to continue until the requirements indicated have been literally and fully complied with, it will throw the matter over for months, which I think would be unfortunate in view of the circumstances named.

469 5. I beg to submit that the said range being so well known, having along the lands between its base and foot-hills and the Pacific, the city of Santa Barbara, as also the towns of Carpenteria, Goleta, Montecito and Naples, and it being a barren remnant, treeless and no arable land except here and there a few acres and in isolated and generally inaccessible places, and the further fact that the status of entries of filings, as also that of alleged squatters, can as efficiently be investigated and passed upon after the creation of the reserve, prompt me to suggest the above as good and sufficient reasons why it would be generally prejudicial if the requirements must be complied with as stated.

6. I desire to say in conclusion that I have given this entire matter serious and careful consideration, and the more I think about it the more does the conviction impress itself upon me that the requirements named are not urgent prerequisites in the premises, and I venture to suggest that you may, perhaps, upon a careful reconsideration of the subject in the light in which I have endeavored to present it, be disposed to modify the orders given.

I have felt it my duty to bring these facts to your official notice, persuaded that no particular interests will suffer, but that several will be promoted if the suggestions made should meet your approval. This is my only reason for presenting it to you in the light I have.

I await your further pleasure, and whatever it may be it will be my earnest endeavor to carry out the same to the best of my ability.

470 Very respectfully,

\_\_\_\_\_  
*Forest Superintendent.*

Witness was then shown report of December 14, 1898 and accompanying map relating to the proposed Cinnabar Springs forest reserve in northern California and stated that they were forwarded by him to the Commissioner of the General Land Office. I furnished the data, and in Mr. Hyde's office this typewritten report was made, I think; I signed the report. The map was furnished to me by Mr. Hyde. I had been instructed to make an examination of the region

described in this map, and after making the examination I returned by way of San Francisco and saw Mr. Hyde, and gave him this data, telling of my examination, and this report in typewriting was done in his office. That is my best recollection. I cannot state definitely whether the map and the report were prepared while I was in Mr. Hyde's office or whether they were sent to me after I left for Los Angeles.

The report and map were introduced in evidence.

## EXHIBIT 146.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *March 27, 1899.*

Mr. B. F. Allen, Los Angeles, Cal.

DEAR SIR: I have your letter of the 25th. I have been accustomed to receive \$3.50 an acre net for lieu locations, leaving 50c an  
471 acre for commission; but if that is all your party will pay, I will take \$3.25 net and give you 25c an acre commission.

I do not suppose it is possible to get 3500 acres, but I may pick up some from time to time.

Yours truly,

F. A. HYDE.  
B. A. C."

## EXHIBIT 179.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *June 29, 1900.*

B. F. Allen, Esq., c/o U. S. Land Office, Los Angeles, Cal.

DEAR SIR: Your letter of the 27th at hand. I can locate the fraction of 17 acres, and if it is for your personal use, I will not charge you anything. If it is for a client, charge him \$5 an acre and I will give you a commission of \$20 out of it.

Yours truly,

F. A. HYDE."

472

## EXHIBIT 183.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *Feb. 20, 1902.*

Mr. B. F. Allen, c/o United States Land Office, Los Angeles, Cal.

DEAR SIR: My attorney, Mr. Henry P. Dimond, who is permanently with me, is staying in Washington during this session of



Congress, watching legislation affecting the exchange of surrendered lands within forest reserves. My impression is that there will be some legislation this session, either by way of absolute repeal of the Act of June 4th, 1897, or its modification to the extent that restricts the right of selection. Whatever the result of the present agitation, it ought not to affect the right of those who have already surrendered lands to the Government, to select other lands in lieu thereof, and Mr. Dimond will urge before the Land Committee the following amendment to any bill affecting the Act:

"That nothing herein contained shall affect the right of those who have executed and recorded deeds to the U. S. of lands within existing forest reserves, to make selection or selections in lieu thereof, under laws existing at the time such surrenders were made, until the full area of the surrendered land has been selected."

He is very anxious to get acquainted with the leading men in Congress, and needs some letters of introduction. You know Senator Allison and if you feel inclined to help in the matter, I will be very much obliged if you will send me a letter introducing Mr. Dimond to the Senator. If you are sufficiently acquainted with any other Senators or Congressmen to give letters of introduction, I would be glad to have them also.

Very truly yours,

F. A. HYDE."

EXHIBIT 184.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

D. SAN FRANCISCO, CAL., *March 1, 1902.*

Mr. B. F. Allen, U. S. Land Office, Los Angeles, Cal.

DEAR SIR: Enclosed please find the letters of introduction for Mr. Dimond, which please sign and return to me, and oblige.

Yours very truly,

F. A. HYDE.  
S. D."

EXHIBIT 189.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street,  
Telephone Main 934.

SAN FRANCISCO, CAL., *Feb. 4, 1903.*

474 Mr. B. F. Allen, c/o U. S. Land Office, Los Angeles, Cal.

DEAR SIR: Those special agents who passed through Los Angeles are out here investigating my business. They have an idea that there is something crooked about my forest reserve locations, and what I

want to do is to make out a list of all the land I have purchased and show it to them, and not let them think that I have anything to conceal. Is there any objection to my telling them that I bought some land of you, which I will tell them you owned prior to your being a special agent, and even if you did not, you have a perfect right to sell it to me, for you got a good price. I do not want to mention the matter, however, without your permission, though I have no doubt they can find it out if they choose to examine the records.

Very truly,

F. A. HYDE,  
D."

Thirty-one other letters and several other reports relating to the above mentioned forest reservations or some of them, all of the same general character as the letters and reports above given, were then introduced in evidence, and read to the jury after having been proved to bear the genuine signatures of Hyde or Allen, as the case might be.

475 Cross-examination.

By Mr. WORTHINGTON:

I am 79 years old. When I was a young man I went to the Mexican War. My uncle was a quartermaster under General Scott. When the war was over I went to Iowa. Went into the mercantile business and then banking. Quit the banking business and came to California about twenty years ago. For eight or ten years before I went to California I was not doing anything at all, except for a while I was in the drygoods and mercantile business.

I went to Los Angeles and immediately after President Harrison's inauguration—in 1899—I was appointed special agent of the Land Office, and served in that capacity until Cleveland was elected in 1893. I retired to a forty-acre orange ranch I had. When McKinley was elected in 1897 I went back into the service and about a year and a half after July 1st, 1897, when I went back, I was appointed Forest Supervisor. I was appointed Forest Superintendent about a year after that.

While I was special agent during Harrison's administration, in a general way my principal duty was examining land entries that had been reported to the Department as illegal, or where the law had not been complied with. That was where some homesteader or pre-emptor had settled on the land and there was some question as to whether he was entitled to it.

Towards the last of my term I was designated by the Secretary of the Interior to go into the forest reserve business and was instructed to proceed to the Sierra Reserve. That was the first

476 one I examined, in San Joaquin County. That was in 1892. I went out of office in the March following, after examining that reserve in March, 1893, the year that President Cleveland came in.

After that I was directed to continue the business and examined the forest reserve known as the San Gabriel. After that the San

Bernardino, and after that the Trabuco. This was all done prior to President Cleveland's administration.

In those days I knew Mr. Hyde, but I have no recollection of having any connection with him in the matter of those reserves that I am mentioning. While I was special agent cannot recollect whether I went into his office at all. Might have. If I did, made no impression.

I did not make these maps, because I could not make a map. I have not the required ability. I could not make a map that would be suitable to accompany a report that is required by the Department. The Government didn't furnish me with map-making material, or with any utensils necessary for making maps. I had no money to pay a clerk.

After my appointment in July, 1897, as a forest officer, my office was at Los Angeles, 484 miles from San Francisco.

There were a great many land offices in California, one at Redding, Stockton, Los Angeles, San Francisco, Sacramento, Susanville, Eureka, Independence, Visaya.

In making my investigations and reports about forest reserves, I had to get information about the records of these different  
477 land offices, and examine the plats and field notes in the different land offices in the region where the land was situated. Generally did it in person. Got the Land Office Clerks to help me.

When I wanted to get information from any of these Government land offices in California, in many instances I would go myself. In other instances I would talk with Mr. Hyde and get him to get the information for me.

In relation to the forest reserve business generally I did not receive any instructions in reference to keeping secret what I was doing, and what I learned about proposed forest reserves. I never, at any time, learned from anybody that I was expected to keep what I was doing about that public business secret. So far as the examination of reserves was concerned, it was carried on openly and the instructions were all leading to that idea. Instructions were to go on the land and make as general a personal examination of it as was practicable to do, and to talk to those living in or near the reserves, and to make it known to the region tributary to the reserve. My idea was that all persons interested in the reserves had a right to have information relative to the creation of it. All persons interested, whether they lived in the proposed reserve, or in the neighborhood where the streams from that region would go.

Referring to the instructions addressed to me by the Commissioner, dated June 17, 1899, those were the same instructions that were sent by the Department for all of the reserves I had  
478 anything to do with, requiring me to report the newspaper of general circulation nearest the land in question. I understood as to all the reserves that before anything would be done about withdrawing the lands, there would be published in the newspaper a notice of the proposed reserve, so that everybody would be advised of it.

Referring to Hyde's letter to me of July 18, 1899—exhibit 159—

in which he sent me a map of the proposed Santa Ynez reservation, I think I asked him to make that and send it to me, because I couldn't make one myself and he had kindly offered to help me in the matter of maps. It was a fact that I couldn't make a plat myself, and I had no authority to employ anyone else and pay them for it, and I didn't like to write to my superiors and tell them I was not capable of doing what I was directed to do.

Witness's attention is called to the map of the Santa Ynez reservation, and the letter of Hyde to him dated June 3, 1899, in which Hyde says, "I send you herewith a map of the land proposed to be included within the Santa Ynez forest reserve, to give the Commission a clear idea of what is wanted. The petition asks for reservation to the Santa Barbara County boundary, but if it was to stop at the county boundary there would be a little strip left out, so it is made to include township 4, north, range 24 west, which leaves the new reservation abutting against the Pine Mountain and Lake Zaca reservation. I send you herewith the proper description for the new reserve."

By looking at this map I cannot tell from memory what was the extension Mr. Hyde suggested. I do not know the region  
479 which borders on this extension beyond Ventura county,

but it was a reasonable addition. Supervisor Crowshaw examined that land, but I went over part of it myself, and talked with Crowshaw about it, and the region there is suitable for a reserve. It is that little strip marked in green down there by the water, shown on the map. The large green is the Pine Mountain Reserve. Cannot tell whether the Ventura County line, as it ran along there, was straight or zig-zag. In laying out these reserves, they frequently try to follow the mountain country, you know. It was the regular custom to lay out the forest reserves, to have the boundaries of the townships all straight lines, but in recommending this particular reservation, having the Ventura County line as the eastern boundary, it would be owing to the character of the land. If the land was suitable for a reserve, it would be proper to have it follow that line; but if the Ventura line, as matter of fact, zig-zagged through a township, the regular and proper thing under my instructions would be to take the regular township line instead of retaining the Ventura line as a boundary.

While I was special agent between 1889 and 1893, I made several investigations of forest reserves and reports thereon, and three or four maps—maps of the Sierra forest reserve, the San Gabriel, the San Bernardino and the Trabuco, all in California. I made the Sierra first. It was very large. It was the largest reserve in California. The map in that case was prepared by the Sierra Reserve folks. I  
480 don't know just who did it, but I procured the map from a representative of the Sierra Club, of San Francisco. That

was a private club that took great interest in the formation of reserves at that time, and in getting the Government to set apart the land which is described on this map. Mr. Warren Olney, an attorney in San Francisco, was the principal representative of the club with whom I dealt. He introduced me to others. He was

afterwards Mayor of Oakland. He is still living. He seemed to be doing it because he was anxious to have the forests reserved. That seemed to be the idea. He was an officer of the club.

Taking up my report in the Santa Ynez reserve, my recollection is that I made a personal examination of a large portion of those lands, just as I say in my report; and I got from my personal examination the information which I put in my report—that there is practically no commercial timber, but principally a brush undergrowth, etc. Very little agricultural land, and it was my opinion that I stated in the report, as a rule, it was far better for forest reserve purposes than anything else, and that a very limited portion is adapted to grazing, and so on. I got that from the examination which I made; that was that the character of the land is mountainous, etc.

Don't recollect just where I got the statement in the report to the effect that that which is suitable for cultivation is embraced in the foothills and adjacent territory, and long since appropriated. Ordinarily, that information would be found in the Government Land Office, in San Francisco or Los Angeles. A portion of it in Los Angeles, right where I had my office.

481 When I said the mountains were sparsely settled, and a comparatively limited number of actual bona fide settlers, etc., I got that information from my examination; and also that there were estimated to be between 60 or 70 families claiming to live in this territory. I got this last from talking with people who lived in the region when I was examining the territory.

I think Colonel Crowshaw told me that it was a common practice in that country to remain long enough to get enough firewood.

It was my opinion when I state that this land was more valuable for forest purposes than any other.

The streams supplying that region with water come down from these mountains, and it was my opinion that the land should be made to subserve for water and timber uses.

The paragraphs and statements of the report were then read to the witness by defendant's counsel and he was cross-examined with respect thereto and stated in substance as to most of the opinions expressed in the report that they were his own opinions, and as to most of the conclusions set forth in the report that they were his own conclusions, and that he got the information contained in the report from his personal examination and observation, and from the land office, and in talking with people.

Attached to witness's report was a clipping from a newspaper. That was the accompanying detailed report from Supervisor Crawshaw, which he sent on with his report.

Witness explains his suggestion in the report that his recommendation be acted upon promptly, so as to put this within  
482 the reservation so that it can get the protection from fire during this season when fires are imminent.

Gives his experience in fighting forest fires, and the damage done. Witness had experience with a very large fire in San Gabriel. Burned for weeks. Cost the Government many thousand dollars. Hired

everybody they could in Los Angeles to help put it out. Cost the Government over \$20,000 to stay that fire.

Continues reading the report and stating that the same is true, and the conclusions his own.

There were two reports in relation to that reservation. There is a map which came from Mr. Hyde. My recollection is that is all I got from Mr. Hyde, and that *that* this report is my own, with the help of Colonel Crawshaw, who is Supervisor. The clippings I got myself, and all the information in there came from myself or my own people.

I cannot recollect about the typewritten matter at the end of it. So far as I can recollect, the map is all I got from Mr. Hyde.

Taking up the second report on the Santa Ynez reservation: The first page in the nature of a personal letter, is in my handwriting, dated August 31, 1899. Then comes the report, where the typewriting was done in Mr. Hyde's office.

Witness's attention is called to the statements in this typewritten report. My recollection is positive that I furnished the data for this report. Cannot recollect whether I was at Hyde's office and gave it there, or whether I sent it by mail. From the date of it, I think I probably sent it by mail. May have been a verbal communication at the time, to someone in his office. I have no recollection about it.

The statement in the report that to make that examination would take me away from my office for a long time at a dangerous season was entirely my own. The statements in that report are true.

Santa Barbara gets her water supply from these mountains, and Santa Barbara was two or three miles from the nearest part of this reserve.

It was my suggestion, for the reasons stated in paragraph 5, that the forest reserve could be made and certain of the entries investigated afterwards. It was my opinion that it was for the benefit of the forest reserves only—the conclusions I reached in my report.

As the report would be read, paragraph by paragraph, the witness stated that the conclusions were his own, and the facts stated true.

Referring to the report on the Lassen Peak Reserve: Report was prepared in Hyde's office. Should be dated April 6th instead of March 6th.

This report is taken up and gone over with the witness. The report says, from such investigation as I have made, I doubt the wisdom of an extensive reservation in the territory immediately north of Redding. The principal investigation I made of this territory north of Redding was at the land office at Redding, in the northern part of the state in that region. Cannot tell the date I was there.

I stopped at San Francisco on my way up from Los Angeles, and as I returned, I think. I had been directed to make this investigation and report on these lands in Northern California, by the Commissioner. I was an entire stranger to that region. I knew that Hyde was well acquainted there; so I stopped to see him and got his ideas about the country, telling him what my instructions

were. Then I went on to Redding. Was at Redding three or four days. Spent this time in the Land Office. My whole time was in the land office.

I examined the tract books in the Land Office, which showed the character of lands; the general plats, which showed the lands that had been entered, and which belonged to a railroad grant. I passed over the railroad in going to Redding, and when I went up to Oregon to examine the Cinnibar Sulphur Springs. That was on my return from that trip. That is, I went to Cinnibar Springs first, and on my return got off at Redding. In going up to Cinnibar, I traveled over this railroad which goes right through the region.

I ascertained from the records at the land office—they showed me that the lands were mostly within the limits of the Oregon and California railroad grant. I learned partially and mostly, I think, by talking with the persons in the Land Office, that the townships had been surveyed and the even numbered sections purchased under the timber law, and denuded of their timber.

485 I could see as I went along that a great deal of timber had been cut—as I went along on the railroad.

It was true that the sentiment in that region seemed to be largely opposed to the creation of reserves, and I called the Commissioner's attention to the territory east of Redding as being proper for reserve. My recollection is Hyde called my attention to this region before I went to Redding. After I got to Redding I made as careful an examination as I could in the Land Office with regard to that region, and examined the tract books and the plats. I intended to testify that I had not been on the ground, as I usually did in making examinations. I made the examination in the Land Office at Redding. I have no recollection of telling Mr. Hyde that I had not been on the land. Could not say whether he knew it or not. I had examined the field notes and surveys at the Land Office in Redding. They are supposed to show the character and topography of the land and whether it is mountainous or agricultural or timber, and they show streams.

The first information to the effect that "it is decidedly the best body of timber remaining in the State of California, either surveyed or unsurveyed, especially taking into consideration the size of the tract," came from Mr. Hyde, but an investigation of the plats and field notes shows that it was timber land. The persons in the land office said it was good timber.

486 I learned first from the parties living at Redding that there were no settlements of any extent within its limits, but it was used largely by sheep and cattlemen for summer pastures.

As to the statement in the report that I was so much impressed with the advantages of reserving these lands that I procured from the land office statements of the amount of land to which the United States had parted with its title in each township, witness says that statement is true; that he got a statement from Mr. Hyde containing those items.

I don't know Hyde's handwriting or Schneider's handwriting. Cannot tell what part of the Lassen Peak plat is in Mr. Hyde's hand-



writing. On refreshing my memory I recollect of requesting Mr. Hyde to make this map. In general, I should say the maps about which I have testified were made at my request.

His report dated February 10, 1899, on the Lake Tahoe reservation, is then taken up; in one paragraph he speaks of publishing a notice in certain papers in the vicinity of the lands, and that he had made such a recommendation, so that all parties interested might submit their views.

He says: "Can't recollect the date of this publication. It was done in the regular way when I made the first examination, and after making my report."

Further, the report says that this publication brought out numerous protests.

The report takes up the protests of the American Land & River Company. Witness says he conferred with these protestants in person. He got the information relative to the situation from  
487 them. That he got none of the detail of these protests from

Hyde, only that the American River Lumber Company had a large mill and was using a good deal of lumber in their mill. That was before I went and saw the secretary myself.

Speaks also of a protest signed by L. A. Hatfield, presented through Honorable Marion Devries. He got this from Mr. Hatfield, the attorney, by visiting him personally.

I got the general information about the protestants from Mr. Hyde, but I visited all these parties myself. I had these protests from these parties, and Mr. Hyde explained to me the real motive behind the protest. I visited each one—most all of the parties—and had a talk with them in relation to it, and explained the character of the forest reserve laws, and why it was desirable to have them created. I went to Placerville, Stockton and Sacramento.

Speaks about calling on George L. Burnham, at Placerville. Says that is true. He got what he stated in his report about Burnham direct from him.

In relation to the Cinnibar Springs reserve, I made an original report on my return from my examination, and the one now shown me is supplemental to that. The original was sent to Washington, to the Commissioner.

Could not tell how I gave the data for that supplemental report to Mr. Hyde. Probably in pencil or in writing. I furnished all the data that was in this report.

My Cinnibar Springs report was written in some form. I have no recollection of just what the form was. It was in the  
488 usual way that I made memoranda as I made the examination. And it was my habit to turn those over to Mr. Hyde for the purpose of having them incorporated into the report in those instances.

Don't recollect how many times I was in Hyde's office from 1897 down to November 12, 1902; but not very many times. During all that time I lived at Los Angeles, substantially one day's journey from San Francisco. Kept no record and could not tell how many times I was in Hyde's office. On my way north to examine the



reserves, and on my return would be the only times I was in his office, and that was not many times—well, say four or five times—six, maybe. That is my best recollection. When I entered his office I would go the same as anybody else, right into the public office. Never knew of a side door. Only knew of the public entrance. Never went except openly and as everybody else would, and asked for Mr. Hyde.

I think it was probably in 1897 when I first began to have any conversation or talk with Hyde about forest reserves. It was certainly not in 1900—there was forty or fifty letters written to me before that time, and when our intercourse did begin, I was not invited to call at his office; I went there without any invitation.

As a general rule, in the course of the performance of my duties as forest Superintendent, I was asked by persons generally about information in regard to proposed reserves. When I was making an examination for a proposed forest reserve, the neighbors and  
489 the people who lived around would ask me questions about it. I tried to answer it in the best way I could, giving them the information they asked for. I never had any instructions to keep these things secret and, as a matter of fact, I never did.

The witness's attention being called to the letter of the defendant Hyde to him, dated June 16, 1899, in which the witness was asked to keep it quiet, he says: "I did not keep it quiet."

And, whether under instructions or requests from anybody else, I never refused to give information about proposed forest reserves to anybody who asked me. As I understood my instructions, they were to give information to any respectable citizen asking for information. That policy governed from the beginning in 1891, and I never had any instructions to the contrary.

During the time I was corresponding with Hyde from 1897 down to 1900, personally I had no knowledge as to the right to exchange school lands in forest reserves for school lands outside of forest reservations.

Redirect examination.

By Mr. PUGH:

Talked with Mr. Worthington and Mr. Hyde for probably an hour Saturday morning. The first time I went to Hyde's office was on my road to make the examination of Tahoe. I went there to get information from him relative to the region around there. Also stopped in San Francisco to talk with others, whom I knew were interested in getting the reserve created there. I knew Hyde  
490 was acquainted with the region up in that vicinity. I don't think I knew, at that time, just what business Hyde was in. Knew in a general way he was in the public land business, but didn't know about the details.

Redirect examination.

By Mr. PUGH:

"Q. When did you learn that? A. I couldn't say when.

"Q. How long after this first visit to his office, or at that time?

A. I have no means of refreshing my memory just at this time. In a general way, I knew the business that he was engaged in; but I don't know as to the detail. I don't know as to the manner or what he was doing, other than in a general way.

"Q. What was the general way, Mr. Allen, and what was your knowledge of the business then, or when you learned it? A. It is hard to get it down intelligently, because there was no transaction that I had with him that would disclose it, further than his interest in making reserves.

"Q. And how did you know that Mr. Hyde was interested in making forest reserves? A. I hardly know how to tell, because I don't hardly know myself.

"Q. State whether or not it is a fact that Mr. Hyde informed you.  
491 "Mr. WORTHINGTON: I object to this leading of his own witness, your Honor.

"The COURT: He may answer.

By Mr. PUGH:

"Q. (Continuing:) Informed you of the business he was in, and whether or not he wrote you asking you to call at his office.

"Mr. WORTHINGTON: I withdraw the objection, your Honor.

"A. I don't think he ever informed me of the business he was in; but he may have written to me to call at his office.

By Mr. PUGH:

"Q. When, if he did that? A. I couldn't state. I never can recollect dates.

"Q. How did you find out what business Mr. Hyde was engaged in, if you ever did find it out? A. I don't think that I ever was well enough acquainted with his business to state exactly. I knew from some source or other that he was engaged in the lieu lands; but in the detail of it I knew nothing of it.

"Q. What do you mean by lieu lands? A. Well, it is what was called lieu lands. I never knew just the manner in which they were obtained, but there was such a thing as lieu land which was obtained, as I understood, from the public lands in relation to the state  
492 matters. I couldn't give the detail of it, because I never had any transactions with it, and I knew nothing about it, further than in a way that I have no knowledge now just when it came or how.

"Q. When did you first hear about it? Can you give us any idea about that? A. Some time after we got acquainted, but I couldn't tell. There was no transaction between us in relation to these things to fix in my memory or give me any definite idea that I could give an intelligent answer to these questions."

Mr. Hyde, on last Saturday, said to me that this original report in Lake Tahoe reserve was not written by him, because he had no typewriter like this. Except from my conversation with Hyde, my testimony would stand that I could not give a definite answer about who wrote it. I had no definite idea about it when I first saw it.

From the fact of having the map made by Hyde covering this ground, I take it for granted that this was done in his office.

I think I answered, in my examination in chief, that I thought I got it from Mr. Hyde; and if it had not been for being informed that Hyde had no typewriter like this, I would still think so. I don't know how many typewriters Hyde had, or how often he changed them. I made one trip when I examined the Cinnibar Springs forest reserve, and stopped at Hyde's office going and returning. That is my recollection.

My recollection is that when I came back I told Hyde what I thought I would recommend. When I sent in my notes or data about these reports to be typewritten at Hyde's office, my  
493 opinion is they were not returned, but I have no positive recollection about it. When I submitted this data to Mr. Hyde, I never knew that any portion of it was not true. I never stated a fact to Mr. Hyde in my notes which I knew to be untrue.

Mr. Hyde suggested to me the idea of leaving the lands out of the proposed Lassen Peak forest Reserve north of Redding. He stated a large portion of it was owned by the railroad company. The field notes disclosed the character of the land in this proposed Lassen Peak Reserve, and my conversation with the land officers and others confirmed the character as disclosed by the field notes of the timber on the lands east of Redding. The officers in the land office, the Register, or Receiver, one of them, gave me these field notes. I don't think I ever got the field notes from Mr. Hyde.

I have no recollection of anyone assisting me in preparing the report of July 28, 1899, on the proposed Santa Ynez Forest Reserve. I talked considerably with Supervisor Crowshaw about it. I think I prepared that myself. That is my recollection. Cannot tell now—good many years ago. Crowshaw, the Supervisor, had made a previous examination of those lands. The character of the lands generally included in forest reservations was supposed to be generally mountainous. Sometimes it included foothills, but the general character was to be mountainous.

I have no recollection of giving anybody except Mr. Hyde information as to the contents of my reports when I submitted them to the General Land Office on proposed forest reservations.

494 Recross-examination.

By Mr. WORTHINGTON:

Cannot recollect, but think it was in December, 1897, that I first went to investigate the character of the country where the Lake Tahoe reserve was proposed to be. I have no recollection that Hyde ever wrote me to call at his office.

"Q. Will you tell me whether or not, after your first report on the Cinnibar Springs Reservation was made, and before you made that supplemental report, you had informed the people up there substantially what your first report was? A. I informed them that I had made a favorable report embracing the lands which they had asked to be taken in reserve.

"Q. I will ask you whether you do not know that the contents of

your report made December, 1897, as to the Lake Tahoe proposed Forest Reservation, had become generally known in the country around that reservation in February, 1899, when you made your second report? A. There had been numerous protests gone in after the publication of my report. By reason of these protests, it had become widely known, and that was my reason for visiting these different places that I mentioned before.

Between the times that I made my first report in July, 1899, and my second report of August 31, 1899, on the Santa Ynez Reservation, it had become generally known that it was reported; but I could not say whether they knew the boundary lines. Aside from  
495 knowing the boundary lines, it was public. The general region was known to everybody, and they knew I had reported favorably.

Redirect examination.

By Mr. PUGH:

"Q. How did you know, Mr. Allen, that it was generally known in the community that you had reported favorably on that proposed forest reservation? A. I visited Santa Barbara frequently, and was with Colonel Crawshaw at the time of my visit. He was a great hand to talk and a great hand to get things in the newspapers, and it was a generally understood thing—as wide as possible to be known, that this thing was being done, and that's the only way I could get at it to tell it.

"Q. That what was being done? A. The creation of this reservation that we are now talking about—the Santa Ynez reservation.

"Q. Is that the extent of your information on the subject—the conversations you had with this man Crawshaw? A. That and the persons I would meet when I was visiting there, was the extent of my knowledge of the public knowledge of this thing."

*Grant I. Taggart.*

Direct examination.

By Mr. BAKER:

Reside at Oakland, California.

496 From June, 1898, until February 1, 1905, was forest supervisor in the employ of the Land Office. Had supervision first of the San Jacinto and Tabuca Canon. My duties were to supervise the reservations, look out particularly to prevent forest fires, prevent people from trespassing in any manner on the reserves, by cutting the timber or trespassing of stock without permission, and the many ways that there might be trespassing. It was necessary to look after that. It was done by forest rangers, whose duty it was to patrol the reserves, the same as mounted police. They made their reports to me, and I transmitted those reports to the Commissioner of the General Land Office.

Before I was made forest supervisor, I was appointed assistant

special agent of the Forest Reserve Division, with instructions to go to Redding and make my headquarters there, to make an examination of the forests of northern California, with a view to locating reserves there. As near as I can remember, it was in May, 1899, that I finally went to northern California to make my examination. I went from San Jacinto, Riverside County, California.

Before I reached San Francisco, and going over on the boat the first morning, I met Miss Clara Glover, an old acquaintance of mine, and I inquired after her family, etc. She was employed at the time with Mr. Benson. I told her I was going north to make an examination of the forests of northern California with a view to creating a reservation there. I saw her that same evening again at her home.

The following day I saw her at Mr. Benson's office. I have  
497 known him between thirty and thirty-five years. I went to his office especially to see Miss Glover. I went on a special matter, personal. I was greatly in need of some funds at that time. Knowing Miss Glover to always have considerable money and being a next-door neighbor and an intimate friend of the family, I asked her if she could let me have \$150. It was really necessary that I should have it then. I had to have it that morning. She said "Wait a minute, I will see." Benson came out and said "Hello, Taggart, Clara says you want \$150." I told him I did, badly. He laid some money on a counter or shelf close by where I was sitting and passed right on. I picked it up and found it was \$150. I took that money right to the Palace Hotel and paid it over to a man who was threatening to bring a member of my family into trouble unless he got the money that day.

I then went to northern California, and was there from the 10th of May until the latter part of August, 1899. Then came back.

On my way back to my headquarters at San Jacinto, I stopped at San Francisco and saw Mr. Gleves, the United States Surveyor General there. After I saw Mr. Gleves, I saw Miss Glover at Benson's office. I saw Mr. Gleves to get the material for making some maps—something that I needed. I had to have them when I was north, and had to buy them myself and pay for them. Mr. Gleves told me he did not have what I wanted. I started to go away, and it occurred to me to go and ask Miss Glover where I could get such  
things. I went into the office to see her just a moment or two.

498 She told me they were getting such things all the time and to leave it to her, that she would get some and send them to me. Then I left and did not see anything more of Miss Glover at that time. A few days after I returned to San Jacinto, there was a bundle of material came—some tracing pens and a scale or two for the measurement of maps, etc. I did not pay anything for them.

I don't admit that I got the \$150 from Benson. I got it from Miss Glover, and I didn't give it back. I refer to the \$150 Mr. Benson gave me. I have not given it back.

On my way back to San Jacinto, I stopped off at Los Angeles and saw Mr. Allen. Allen asked me if I had gotten through up north, and I told him that so far as my memoranda were concerned I had,

that I had gotten my field notes and all. He asked me if I had determined on what I would embrace within the reservation, and if I had concluded to recommend the creation of a reservation, and I told him that I had several. He asked me if I could tell him just what they were, and I told him no, that I had not fully made up my mind, but that I would probably look them over when I got back home to headquarters. Could not tell him then. He asked if I would let him know as soon as I made up my mind, and I told him I would. As I made up my data complete as to what I would recommend should be created into a reservation in different locations, I would send the memoranda to Allen before I did to anybody

else. Afterwards I sent the memoranda to Miss Glover.  
499 Can't remember just the time I sent it to Miss Glover, but it was as I would make up my mind and get my maps going.

Then I would take a memoranda and send a memorandum of a township that would be embraced, and the fractional townships, and would let her know. I think I sent her the same memoranda that I sent to Allen.

Witness was here shown Exhibits 373, 374, 375, & 376, heretofore copied in the record, and he testified that he sent copies of the same to Mr. Allen; also that he sent copies of the same to Miss Glover before he got through, but not at the same time he sent the slips to Allen.

Some of the memoranda I sent Miss Glover would be months apart. I sent them to her address in Oakland, because she asked me to let her know when I made up my mind what I was going to embrace within the reservation, that she had a little money on hand and would like to get hold of a piece or two of property.

This witness was then shown, by counsel for the Government, his reports to the Commissioner of the General Land Office and the accompanying maps as to the proposed Mount Shasta Reservation, the proposed Cinnabar and Mt. Sterling Forest Reservation, and the proposed Diamond Mountain Forest Reservation, and the proposed Warner Mountain and Goose Creek Reservations. Witness stated the reports and the maps were entirely his own work. (They relate to the same lands described in Exhibits 373, 374, 375.)

I wrote Miss Glover if she could loan me \$220, and that if she could to hand it to an attorney in Oakland and to telegraph me whether she could or could not. Later she telegraphed me  
500 I think simply "O. K. we will hand the money as directed."

The telegram I got was signed, I think, by Miss Glover. Don't think I got a letter from Miss Glover in relation to it. Never paid this money back. When I wrote to Miss Glover for this money, she did not owe me anything. I never paid back the \$220. I never paid her back the \$150. Never made any attempt to pay it back. I have never been asked for it. Have no letters from Miss Glover. I received probably three or four—just simply in reference to this matter. She asked me if I had yet made up mind in regard to what would be included within the reserve and to let her know, and as I did make up my mind I advised her. Think Miss Glover was employed by Benson for twenty-five or thirty years. She was a

young miss when I first knew her and lived next door to us. The \$220 has never been demanded of me.

Never knew the defendant Hyde. The first time I saw him, he was pointed out to me in San Francisco, about three years ago, when the examination took place there. Never been in his office, to my knowledge.

Prior to the indictment in February, 1904, was in Benson's office I think three times. Only saw Benson once. Since that time, have never seen him. Before that time, I saw him twice, about 25 years ago.

Cross-examination.

By Mr. CAMPBELL:

501 About 25 years ago, Miss Glover bought a house through me, and Mr. Benson came to my real estate office in Oakland and paid me the money there, I think, for Miss Glover. It was the house right next door to mine, and the Glover family and my family lived next door in Oakland for a great many years and were very intimate and friendly. We exchanged visits. I knew Miss Glover's father very well. Understood he was a man of considerable means, and that he had died, and that Miss Glover had considerable money.

As near as I can remember, it was about the 1st of May, 1899, when I met Miss Glover coming on the ferry-boat from Oakland to San Francisco. Miss Glover was a cripple and came over on the ferry-boat in a buggy. I was passing through the ferry. Didn't know she was on until I saw her in her buggy, and I went up and spoke to her. She asked me where I was and how I was, and I told her what I was doing. I told her I was going up in the mountains, and she said, "I have a little money on hand. If you see anything up there that is good to get hold of, I would like to get a little of it. If you can give me some information, I would like to make some money."

The only instructions that I got from the Department about my reports were those contained in the instructions introduced in evidence here in that letter from Mr. Wimple. I got several instructions several times. When I went to determine what I would do in relation to a forest reserve, I went around and talked to all the people. I made inquiry in regard to it, and ascertained by talking with people as to whether they would like to have a reserve created or would be opposed to it. Talked with them generally in regard to the location of the reserve and would get them to express  
502 themselves in writing about it. My reports will show I gave the names of several papers published nearest to the reservation, if I saw fit to recommend the creation of it.

Have known Benson 25 or 30 years. He never asked me for any information, and I never gave him any.

About that time, it is a fact that a member of my family got into very serious financial difficulty in San Francisco, and I was trying to help him out, and there was an immediate necessity for \$150. I went to Miss Glover and asked her to loan it to me. She said she



would see about it and went into Mr. Benson's office. Benson came out and said, "Clara tells me you need \$150, Grant," and put it down in front of me and went about his business. This was a couple of days after I had first seen Miss Glover, and this immediate necessity had come up in the meantime. It was this same person—member of my family—who put me in the predicament about the \$220. It was nothing of my own. I had to protect a certain member of my family, and I wrote Miss Glover, and she went and paid the money to a certain man for me; and I have never paid it back. I have never been able to. The first time, I explained to Miss Glover what I wanted the money for.

Cross-examination.

By Mr. WORTHINGTON:

It was the materials on which *there* maps were made—a portion of it—that I got from Miss Glover. It was reinforced 503 paper, some tracing paper, two or three scales and two or three tracing pens. Scales for measurements. I think the whole outfit was worth about \$31, all told. I used it for making up maps to send in my reports. The Government did not furnish the forest supervisors with material for making up their maps. They required us to pay for it out of our own pockets. The Government allowed us to get it where we pleased. We were not furnished with a stenographer or a typewriter. I had to have everything of that kind done. I had to pay out of my own pocket for typewriting these reports. Mrs. M. A. Wright, the wife of the cashier of the bank at San Jacinto, did some of it for me. She was an acquaintance of mine who did typewriter work of that kind. I wrote out the report and let her copy it—each of these reports recommending the several reservations. I had written out my report about this reservation and interlined it, and it didn't look very nice, and I took it to Mrs. Wright and had her copy it. I just left the report with her. It was probably about 48 hours later that the report was typewritten and given back to me. In the meantime she had it. I don't know, of course, how many persons may have seen it.

The beginning and the end of the report were then read by Mr. Worthington.

Each of the reports referred to here today I prepared in my own handwriting and took them to this lady to be copied on the typewriter. I left the manuscript with her, and about the same day would go back to get the typewriting. In the meantime she had possession of the report and could show it to anybody she pleased.

504 The report of the Cinnabar Springs and Mt. Sterling Reservation I made in my own handwriting, because it was so short—just two or three pages.

The instructions to the witness were just general instructions to go north and examine that whole region, and he made those reports under the general instructions.

"Q. Why did you not prepare these reports that you took to Mrs.



Wright yourself, and keep them secret, so that nobody but the Commissioner would know what you had written? A. I really hadn't the time to do it, anyway. My duties as forest supervisor kept me busy all day long and sometimes from three or four o'clock in the morning until four or five o'clock at night, riding, thirty, forty and fifty miles a day. In fact, every one of these maps that you see there was made up after seven o'clock in the evening, and between that and twelve o'clock at night."

I never had any instructions as to keep my report secret. Just these general instructions, (indicating). Never had any instructions from my superior officers to keep secret what I was reporting to the Land Office.

When I made this trip up in Northern California, I went to farmers and miners or ditchmen or anybody and made inquiries, and I went to all the land offices, except at Roseberg in Oregon, and took the data of all lands that had been disposed of.

You could tell pretty well where the proposed reservation would be. Take the Warner Mountains. They will be thirty or forty or fifty miles long, and average twelve to forty miles wide. I would tell people that it was proposed for the reservation generally

505 —that I was sent there to examine the forests in northern California, with a view to creating reserves. I would talk to the people and allow them to know where the proposed reserve was to be in order to get their opinions. I made no secret in talking to these people about what I thought of it. I gave my views and got theirs; that is, that I was examining and wanted to know what they thought about it. I was looking for information, and my directions were if I could get it in writing, and those written ideas would be transmitted with my reports.

Redirect examination.

By Mr. BAKER:

I did not send any memorandum in regard to my report after I arrived at a conclusion, to anybody except Allen and Miss Glover. I think I talked to several people in making up my reports, in making up my maps. I was just in the office, right in the house or on the street. People would stop frequently in front of the window at which I was at work, and look in and see what I was doing. I never thought of keeping anything—doing it in secret or anything of that kind. Did most of that work at night. They would come frequently and stop in at the door and say, "Hello, Grant, what are you working on at this time of night?" They would see the maps, but not the reports. As I would get one map made, then I would make the report and send it off.

Recross-examination.

By Mr. WORTHINGTON:

506 After I fully prepared the map in the Diamond Mountain Reserve, I got a friend of mine to put the title on it—Mr. J. Ward McKim. He was at San Jacinto, the druggist there.

That was the map to show what I recommended to be included in the Diamond Mountain Forest Reserve. I left it with him over night while he was doing it. There was no secrecy about it, and I don't know how many people he might have shown it to. I don't know whether all the lands I recommended were put into the Diamond Mountain Reserve.

Mr. Allen was the superintendent, and I was the supervisor under him.

I went out of office on the 1st of February, 1905. Mr. Allen was my superior officer, and when he asked me for information as to what I recommended I gave it to him. I had no knowledge from him what he wanted to do with it or that he wanted to give it to anybody else.

Redirect examination.

By Mr. BAKER:

I had no instructions as to secrecy in reference to this information. I would say that I treated my correspondence with the Department as confidential. Any letters I got from the Department I did not make public. I placed them on file, and put on file any letters I wrote to the Department. I never showed any report that I remember to anyone, only those I got Mrs. Wright to typewrite for me. She was the only person in San Jacinto who did typewriting, and she did it as an accommodation for me. Her typewriting desk was right there in the bank, by a window near the street. When I left this report with this lady to typewrite I didn't give a thought as to whether anybody would see it. Didn't think anything about 507 it. I was at the bank one day, and asked if she would do the typewriting for me. I didn't caution her not to show it. I didn't give a thought as to whether I felt at liberty to disclose my reports to anybody.

When I sent the paper to Miss Glover, I didn't think I was violating any duty.

When I received the money from Miss Glover I might have been violating some duty, but it was a necessity that I sent and got it.

By Mr. WORTHINGTON:

I would work on these maps after hours. They were right on the table before me, and people would stop in to see me and ask what I was doing. The map would show what I was going to recommend as a reserve. I didn't undertake to prevent people who came into my room from seeing what I was doing. I presume if they had asked me, I would not have told them what I was working on. Did not consider that there was any secrecy about it. Didn't think anything about it, one way or the other.

By Mr. BAKER:

The general class of the people in town passing right on the street would come in to see me. There were about a thousand people in San Jacinto.

*E. P. McCornack.*

Direct examination.

By Mr. BAKER:

At present I am in no active business. Superintending some farming operations. In 1897 I was President of the  
508 First National Bank of Salem, and incidentally, in a small way, was attending to some matters before the State Land Board.

First met Hyde in 1887 or 1888. Attended to his business to some extent before State Land Board at Salem. His business was mostly indemnity school land selections.

Coming to the year 1897, I attended to the matter of applications presented by clients of his for the purchase of land. Early in the year 1898 Hyde came to Salem and called on me. Our conversation was about the question of the right of the state to make selections in lieu of the certified sections in the Cascade Forest Reserve. It was recognized that this right had been denied the state, and that the states now had those lands for sale. Hyde said some of his clients wanted to purchase these lands. They were in sections sixteen and thirty-six. He said they would be making some applications, and asked if I would attend to the matter before the State Land Board. Didn't give me the names of applicants then. We made a verbal contract. I was to have ten cents an acre. After this, whenever any of his clients wanted to present applications, I usually filed them in the State Land Board, and made such payments as necessary, and received the certificates of sale in most of the cases. I made the first payments of one-third of the purchase price. The first applications were presented to me by Mr. Schneider.

After that I got some applications from G. W. Davis, and I advanced the money myself for these. When I got the certificates of sale I forwarded them to Hyde and drew on him to  
509 reimburse me for my expenditures. Those drafts were honored. Mr. Schneider had an account at my bank. The money that went into that account came from Hyde.

Mr. WORTHINGTON: I want to say, in order to save time, that there is no dispute here that the money used by Mr. McCornack and Mr. Davis, in these matters, came through Mr. Hyde. I admit that they were doing this for him. I do not mean to say that Mr. Davis was working for Mr. Hyde, because he said he was working under Mr. McCornack. Mr. McCornack was doing it for Mr. Hyde, and Mr. Hyde put up the money."

(Ledger No. 5 of the First National Bank is produced, showing the account of Schneider. Schneider's bank account runs from August 1st, 1898, to September 12, 1898. This account shows an aggregate deposit of \$22,500.)

Schneider didn't have to show me anything in order to enable him to draw money out of this account. Most of the checks were drawn to me when the applications would be sent me. The money

was substantially all drawn to make first payments on the land. I dealt with only two persons in getting those lands. They were J. H. Schneider, and George W. Davis.

First met Schneider in July, 1898. Don't remember the circumstances, but he appeared at the bank as a client of Mr. Hyde, and entitled to recognition under my understanding with Hyde. Don't remember he had any letters from Hyde. Don't remember whether he brought applications with him the first time he came there. He

510 did bring some applications and drew his personal check on the bank of Ladd & Tilton to make the payments. I filed the applications in the State Land Office and paid the purchase price from the proceeds of that check, and received the certificates of sale. Schneider had the assignments and deeds, and later they were given to me by him. I have no recollection as to whether he had any notes. I could reason about it and answer that by saying that notes were necessary in those cases. After the certificates of sale had been received from the state, Schneider gave me the assignments.

I gave Schneider the descriptions of the vacant lands in the reserve—Cascade Forest Reserve. In my understanding with Hyde, perhaps I was to furnish those descriptions. I had a lot of small township plats which are usual in the land offices. I checked off on them the vacant lands and gave them to Schneider. I would have to look at the individual ledger to state how long I dealt with Schneider. The last entry is September 12, 1898. I assume that was the time he closed the account and left Salem. I have no doubt it was.

I furnished Mr. Davis some descriptions, and suggested that he get purchasers for those lands, and he did so. Davis got a number of applications and presented some of them to the Board himself. I think; and he submitted others to me. He would bring a few at a time. I would file them in the State Land Office, pay one-third of the purchase price, and receive the certificate of sale. Then I would receive from Mr. Davis an assignment. The assignee would usually be blank; not always. I would then send the certificates of sale

511 and the assignment to Hyde at San Francisco. Usually drew on him when I sent the papers. Don't think I drew on Hyde for notarial expenses, because I never mentioned Davis' connection with the matter. Don't remember whether I paid the notarial fees to Davis out of my ten cents an acre. I never paid any money to Schneider.

I saw Hyde once after that, towards the end of the year 1898, in San Francisco. We checked up our memorandum account and had a settlement. When we checked up Hyde had paid one-third of the purchase price on these Oregon lands. As far as I know, Schneider and Mr. Davis were not acquainted. It was my understanding from Hyde that I had charge of all of his applications filed in the Cascade Forest Reserve.

I have no faculty in judging handwriting.

I corresponded with Hyde about lands in the Cascade Forest Reserve. I have brought all of the correspondence with me.

The record title owner of the land was considered the owner when the question of restitution came up. That is, the original applicant where there was no assignee. In the cases where I filed the application, I put up the purchase money; but not always my own money. If Mr. Schneider brought an application, he submitted the money with it. Whose money that was he submitted, I do not know. When Schneider drew money from my bank, I would know it came from his account there.

Where an application was made and the one-third purchase price paid, and the certificate of purchase received, and after a while it was discovered that, for some reason or other, the application was *had*, or that those lands could not be located, if the applicant had not  
512 transferred his interest, he would apply to the state for the repayment of the money paid. While I was representing Hyde in this matter there were some repayments made. Remember five or six instances. It comes to my mind that there were six. In order to get the money from the state, a petition would be presented to the State Land Board, reciting that the petitioner was the owner of whatever title or color of title had been received by virtue of a certain sale, and that the State was unable to convey a title and had received the money from the applicant, and ask that the applicant be permitted to surrender such title or color of title he had received and have the money paid returned to him. Never had any trouble getting this money back. The petition would be sent to me by Hyde, and I presented it. The Board would draw a warrant for the return of the money to the petitioner. I would send this warrant to Hyde, in his cases. Then it was endorsed by the person in whose favor it was drawn.

Running over these papers and refreshing my recollection, I made such a collection for Elizabeth Dimond. After examining this correspondence, I sent it to Mr. Hyde.

Recalled for further direct examination.

By Mr. BAKER:

First became acquainted with Hyde in 1887 or 1888. Did business for him first, then. Coming down to 1896, I was doing no new business with him. Perhaps a few matters that were unfinished were receiving a little attention. Commenced to do new business for him  
513 in 1898, attending to the applications to purchase school lands in the Cascade Forest Reserve. The old business I did for him was attending to his indemnity school land selections in Oregon.

"Q. Was there any difference in the mode of getting state lands in the old way and the new way? A. Yes.

"Q. What difference? A. The new way was to proceed at once to get applicants anywhere and everywhere. The older purchases were usually by applicants who desired the lands for themselves."

I had no conversation with Hyde in regard to what I call the new way. I did not invent that new way. Mr. Schneider came up there and commenced securing applications. I suggested to Mr. Davis that

he secure some purchasers, and he did it. I only knew Schneider was doing it in the new way by observation. It was in August, 1898, that it first suggested itself to me to have applications gotten in the new way. I saw these applications coming in and knew, in a general way, they were being purchased for Hyde. They came from Portland in bunches; and I sent them to Hyde in bunches just as they were issued by the State, immediately transferred. I don't remember ever to have done this before. The business I was doing for Hyde in 1898 was very much larger than that I previously did for him, perhaps ten times as large. My bank account does not show all moneys that were used in making the first payments. These first payments were made in part by checks drawn by Schneider on the Portland Bank, (meaning Ladd & Tiltons'). This does not appear in his account with the First National Bank of Salem. The second and third payments on the land were made by Hyde by drafts  
 514 or certified checks drawn in my favor. I cashed the checks and paid the money at the State Land Office and got the deeds from the state. Some of the grantees were Schneider, Mr. Hyde himself, Mr. Morris and others I do not remember. I don't remember the name of Elizabeth Dimond. I only remember that name in connection with the correspondence here today in relation to applying for the return of some money. I remember the names of four people who applied for the return of their money. They were Bateman, Dimond, Shotwell, and Sterling. By Dimond I mean Elizabeth Dimond. I got those refunds. The warrants were drawn in the names of those persons, and I sent them to Hyde.

The only account I kept was a memorandum. I don't know whether Hyde had an account book with my account in it. When I went to his office to settle, we looked over our accounts and agreed upon the plans. Don't know which way the balance was. He either paid me the cash or I paid him. Don't remember to have exchanged receipts.

I took out ten cents an acre, and in the case of refunds by the state I collected my ten cents all the same. In a general way, I remember these transactions covered some thirty-five or forty thousand acres of land, covering about eight or nine months.

With respect to the size of the checks. There were some checks of \$10,000 or \$12,000. Saw Hyde twice about settling. Once perhaps in November 1898. The next time in 1899. They were both brief meetings. There was very little done or said about it. Mr. Hyde was there and checked over the account, and we had no further business. That was all there was to it. Prior to 1898, I only saw

Hyde once in a while, maybe once in two years for a while.  
 515 and then once in four years later on. I was his local representative before the State Land Board, and had had a good deal of correspondence with him. When any application came in from him, or any of his clients, I filed them, or, if any list of indemnity selections were to be prepared, I prepared them or looked up the indemnity. That is, those losses which the State had sustained, for which the states were entitled to select other lands. Up to 1898 I had not secured any applications for him. I had no knowledge as

to how the applications which I received prior to 1898 were obtained from the applicants. Don't know how many applications I received at a time. I have no recollection of Mr. Hyde's mentioning Mr. Schneider's name, when I had my conversation with him in 1898. In my understanding with Hyde I was to recognize anyone who came there as a client of his or doing business for him. When Schneider came, he represented himself as doing business for Hyde, or as being a client of his—Hyde was his attorney.

Cross-examination.

By Mr. WORTHINGTON:

It was manifest to me that Schneider was getting a lot of people to make applications in the interest of Hyde, and sending the papers to me to be filed in the land office. I filed them in the bunches as I received them. Whatever I could infer as to the business and the manner in which it was done was obvious to the land office people too. There were a few other operators in the land business there who were also speculating in this way, and it was generally known throughout the State of Oregon by people who had any knowledge of land business affairs.

516 There were many advertisements in the papers wanting to buy claims within forest reserves, but they did not designate this method in the advertisements, and it was well known among people interested in that business, including the people in the land office, that people were applying for the lands for the purpose of selling to others.

I am not clear whether Schneider used the word "Client" when he came to me. Hyde never suggested anything about Davis. He came into the matter entirely through me. I asked Davis if he did not want to get a number of purchasers for lands within the reserve, telling him that there was a fee in it for him if he did it. He consented. I made no particular arrangement with him about his fee. He presented his charges, whatever they were, and I paid them. No notes, or anything, made of it. It was hardly on the basis of paying him so much for each client. He would come and say, "there is so much due me" and I paid him. I made no memorandum, because I avoided bringing Davis into it at all. I did not want Davis' name to appear in it. That was a matter between him and me. I think Mr. Davis filed some of the applications he obtained in the state land office. One or two, the applicants themselves filed, and the others he turned over to me and I filed them. He turned over all of the assignments to me and I sent them to Hyde, and the names of the assignees, or grantees, was left blank in the assignment. In other respects I turned over the assignments from Hyde in the way in which they were received from Davis. No change made in any of them that I remember.

I have no recollection of any irregularities in the preparation of those assignments, or the acknowledgments. I knew that  
517 these men making the applications were in fact making them for somebody else, and that they were to come to me and be



turned over by me to Hyde. Schneider sent me some applications, and I filed them in the Land Office. My recollection is I filed them just as they came to me from Schneider. Afterwards, Schneider delivered the assignments to me, and I sent them to Hyde just as I received them from Schneider. Don't remember distinctly, but my impression is that the names of the assignees in the assignments were blank when I sent them to Hyde.

The first time I spoke to anyone about these matters was on one day when I came here, in response to the subpoena.

In a limited way I was a sort of general land attorney, and acted for some other people besides Hyde. It was not my main business. The little I did for other people was after I had acted in this way for Hyde. Prior to the Act of 1897, the exchanges that could be made of school lands that the state had lost, could only be made for other lands within the State of Oregon. When Oregon found some of her school lands were swamp lands, she had to take other lands in Oregon for them. Under the Act of 1897, the exchange could be made by obtaining reserve lands of the Government anywhere.

Cross-examination.

By Mr. BIRNEY:

I know Benson. I have only met him two or three times. It was so long ago I have forgotten. Probably I met him once about fifteen years ago. I have never done any business with him in any way, and he never tried to get me to do any business for him.

518 By Mr. WORTHINGTON:

"Q. Mr. McCornack, were you, at any time, prosecuted or charged with crime about the matters you have testified to here? A. No sir."

Redirect examination.

By Mr. BAKER:

I never myself, nor did I have Mr. Davis, secure applications for school lands for anybody other than Mr. Hyde.

Certain correspondence between F. A. Hyde and the witness, the genuineness of which being first proved, was introduced in evidence as follows:

EXHIBIT No. 229.

(Written from Dictation.)

"F. A. Hyde,  
630 Commercial St.

SAN FRANCISCO, CAL., *December 10, 1897.*

Mr. E. P. McCornack, Salem, Ore.

DEAR SIR: I send you herewith a map of Oregon, and will be much obliged if you will indicate thereon the boundaries of the forest reservations, and also of the land districts.



I have marked thereon one of the reservations, which I think is correct; but I am under the impression that there are one or two more that I have not got.

519 Has there been any late map of Oregon published? I mean one of those private maps which show interior section land surveys. If so, I wish you would get one and send to me, and I will send you the money therefor.

Yours truly,

F. A. HYDE.  
Per C.

EXHIBIT No. 236.

(Written from Dictation.)

"F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *Feb. 23, 1899.*

Mr. E. P. McCornack, Salem, Oregon.

DEAR SIR: Mr. Clarke has spoken to me several times about the unsettled account in Oregon. You will remember that you sent for \$500 for possible needs in the future. I suppose that no more needs will come and I would like to have you send me a statement.

I have your letter of the 21st, stating that the Commissioner has held for cancellation the State Selection of N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{2}$  of Sec. 19, T. 29 S., R. 32 E., because of conflict with prior swamp land selection. I think you told that this swamp land selec-

520 tion had been abandoned by the Governor. If so, please give me the data relative thereto, and I will make it the basis of an appeal to the Secretary. I do not know why the abandonment should not be accepted.

Yours truly,

F. A. HYDE.  
A."

EXHIBIT No. 282.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

SAN FRANCISCO, CAL., *June 1, 1899.*

Mr. E. P. McCornack, Salem, Oregon.

DEAR SIR: Referring to your telegram asking my price for 20,000 acres of Forest Reserve Lands, and my answer that the price would be \$4.50 an acre, I have to say that the prices are advancing. Within the last month I first made a sale of 4,000 acres at \$4 an acre; then a sale of 5,000 acres at \$4.25; then today a sale of 1000 acres at \$4.50 an acre, spot cash, upon delivery of papers. Prices are going up and there is a big eastern demand.

Yours truly,

F. A. HYDE."

521

## EXHIBIT No. 284.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

D. SAN FRANCISCO, CAL., *July 23rd, 1901.*

Mr. E. P. McCornack, Salem, Oregon.

DEAR SIR: On the 1st inst. the President proclaimed a Reservation embracing the following lands:

South half of Township 1 South,

Townships 2, 3 and 4 South, Range 11 East.

Township 5 South, Ranges 9 and 10 East, and so much of Township 6 South, Ranges 9 and 10 East as lies North of Warm Springs Indian Reservation.

This proclamation and the recommendations that led thereto were kept secret for over two weeks, and meanwhile someone went in and bought the school sections. Will you please inform me when they were bought and who superintended it.

Yours truly,

F. A. HYDE.

1899."

522

## EXHIBIT No. 204.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street.

D. SAN FRANCISCO, CAL., *Mar. 10, 1902.*

Mr. E. P. McCornack, Salem, Oregon.

DEAR SIR: I send you herewith the following documents:

Application of Elizabeth Dimond to purchase of the State of Oregon N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , and S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 22; S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , and N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 24, T. 36 S., R. 32 $\frac{1}{2}$  E., 320 acres in lieu of S.  $\frac{1}{2}$  Sec. 16, T. 20 S., R. 6 E., W. M.

Application of M. J. Sterling to purchase of the State of Oregon Lot 4, S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 19, N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 20, T. 36 S., R. 32 $\frac{3}{4}$  E., W. M. in lieu of N.  $\frac{1}{2}$  Sec. 16, T. 20 S., R. 6 E., W. M.

Application of L. P. Shotwell to purchase the E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  Sec. 8, W.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Sec. 17, N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 18 and N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 32, T. 36 S., R. 32 $\frac{3}{4}$  E., W. M. in lieu of N.  $\frac{1}{2}$  Sec. 36, T. 20 S., R. 6 E., W. M.

Application of J. B. Bateman to purchase the lot 2, S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , N. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  Sec. 4, N. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 6 and S. E.  $\frac{1}{4}$  of N. E.

¼ Sec. 8, T. 36 S., R. 32¾ E., W. M. in lieu of S. ½ Sec. 36, T. 20 S., R. 6 E., W. M.

523 Non-mineral affidavit of F. C. Lusk for the lands applied for.

You will receive from the County Clerk at Prineville an abstract for Sec. 16 and 36, T. 20 S., R. 6 E., W. M., which will show that the State title to said sections is held in tracts of 320 acres by the four people now applying to purchase lands in lieu thereof. I enclose also an application by each for the restitution of the purchase money paid to the State therefor, which you can present to the Board of Land Commissioners when you receive the abstracts of title. There will be something to pay on the abstracts. I sent \$10 on account, and told the Clerk to collect the balance of you.

Yours very truly,

F. A. HYDE.

5 Enc."

#### EXHIBIT No. 205.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street,  
Telephone Main 934.

D. SAN FRANCISCO, CAL., Mar. 11, 1902.  
Mr. E. P. McCornack, Salem, Ore.

DEAR SIR: Herewith I send you four non-mineral affidavits relative to the selections sent you yesterday. If you have not already sent them off, you can use these affidavits instead of the single one sent you before. There is an affidavit here for each application, and if you send the applications separately, which I would advise, an affidavit can be put with each one. By sending the selections separately, if any one is rejected, the others will not be affected thereby.

Yours truly,

F. A. HYDE."

Enc.

#### EXHIBIT 208.

State of Oregon,  
Office of the State Land Board,  
M. L. Chamberlin, Clerk.

SALEM, April 12, 1902.

E. P. McCornack, Salem, Oregon.

DEAR SIR: Applications of J. B. Bateman, Elizabeth Dimond, M. J. Sterling and L. P. Shotwell for repayment of sections 16 and 36 in T. 20 S. R. 6 E. have been allowed by the Board, and upon receipt of duly recorded quit-claim deeds to the State, warrants will issue.

Yours truly,

M. L. CHAMBERLIN,  
Clerk of the Board.

525

## EXHIBIT No. 209.

SALEM, OREGON, *April 17, 1902.*

Mr. F. A. Hyde, San Francisco, Cal.

DEAR SIR: Herewith I hand you vouchers for the signatures of Sterling, Shotwell, Diamond and Bateman. Will you please have the accounts properly sworn to and the receipts signed and on return I will send you the warrants.

I am very respectfully,

---

State of Oregon,  
Office of the State Land Board,  
L. M. Chamberlin, Clerk.

SALEM, *April 16, 1902.*

Mr. E. P. McCornack, Salem, Oregon.

DEAR SIR: I herewith inclose vouchers No. 771 to 778 inclusive for repayment on Sections 16 and 36 T. 20 S. R. 6 E.

Upon receipt of same properly acknowledged and receipted warrants will issue.

Very truly,

M. L. CHAMBERLIN,  
*Clerk of Board.*

526

## EXHIBIT No. 210.

SALEM, OREGON, *April 23, 1902.*

Mr. F. A. Hyde, San Francisco, Cal.

DEAR SIR: Herewith I hand you drafts on the State Treasurer in favor of J. B. Bateman, Elizabeth Diamond, M. J. Sterling and L. P. Shotwell, \$459.15 each. Will you please have these drafts properly endorsed and return to me and I will collect and apply on the payments due on those lands selected in lieu of these surrendered and account to you for the balance.

I am very respectfully,

---

Encl.

## EXHIBIT No. 211.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street,  
Telephone Main 934.

D. SAN FRANCISCO, CAL., *April 25, 1902.*

Mr. E. P. McCornack, Salem, Ore.

DEAR SIR: Enclosed herewith find drafts on the State Treasurer of Oregon as follows:

527

No. 771	J. B. Bateman.....	\$400.00
772	".....	59.15
773	Elizabeth Dimond.....	400.00
774	".....	59.15
775	M. J. Sterling.....	400.00
776	".....	59.15
777	L. P. Shotwell.....	400.00
778	".....	59.15
Total .....		\$1836.60

Please collect the same and send the above amount to me by draft on San Francisco.

Yours truly,

F. A. HYDE.  
P."

Enc.

EXHIBIT No. 213.

213.

SALEM, OREGON, April 30, 1902.

Mr. F. A. Hyde, San Francisco, Cal.

DEAR SIR: I am in receipt of yours of the 25th inst. enclosing sundry drafts on the State Treasurer, therein mentioned, amounting to \$1,836.60. I have presented the same to the State Treasurer and collected amount due thereon and have applied the same as follows:

Deposited to meet payment due from Bateman, Diamond, Sterling, and Shotwell, on their applications now on file, \$400 each.....	\$1600.00
Register and Receiver's fees for selection of above lands.....	16.00
Balance charged by County Clerk for Abstract.....	7.00
My fee for sundry services to date.....	50.00
Check herewith for balance.....	163.60
\$1,836.60	

528

Trusting that you will find this correct,  
I am very respectfully,

EXHIBIT No. ~~127~~ 217

SALEM, OREGON, June 3, 1902.

Mr. F. A. Hyde, San Francisco, Cal.

DEAR SIR: In compliance with your instructions by wire this day received, I herewith hand you my check for \$931.15 being balance of the amount collected by me from the State for Shotwell, Bateman, Diamond and Sterling and not applied on their new selections to purchase as stated in my letter of the 29th ult. This closes that

matter up I believe. Will you kindly acknowledge receipt and oblige,

Yours very respectfully,

EXHIBIT No. 218.

(Written from Dictation.)

F. A. Hyde,  
415 Montgomery Street,  
Telephone Main 934.

SAN FRANCISCO, CAL., *June 5, 1902.*

Mr. E. P. McCornack, Salem, Oregon.

DEAR SIR: Your letter of the 3rd inst. at hand, enclosing check for \$961.15 being the amount collected by you from the State for L. P. Shotwell, J. B. Bateman, M. J. Sterling and Elizabeth Dimond.

Yours truly,

F. A. HYDE.  
Per F.

529

*Oswald West.*

Direct examination.

By Mr. BAKER:

At present one of the railroad commissioners of Oregon. In September, 1903, I was appointed State Land Agent for Oregon. I was directed by the Governor to investigate the land transactions.

I made investigation in reference to the list of cases that were produced here by the surveyor in the Cascade Forest Reserve. I have a list of the applications that are in evidence here. I had it made up by a clerk in the office. I investigated the applications.

In re the George W. Davis applications, most of the applicants were known to me personally. It was my home. I was living in Salem at the time. Most of them were boys I went to school with. They were in business there, and some were over in Lincoln County. Davis had a stone quarry there. I looked them up and found that he had secured these applications. I found all his applicants to be real persons. I could not find that any of the Don Alexander applicants were residents of Portland—that is, there were one or two. For instance, in 8563 and 8567, Annie S. Murray and A. C. Murray, and 8573 and 8574, E. E. Page and A. H. Bean, there were parties living in Portland by those names. There did not appear to be anyone living in Portland at that time, for the others. That applies to all the Don Alexander papers except those I have mentioned. I would naturally go to the directory first, to find if there were any such people in Portland. I took Polk's directory. I looked, I think, in the years 1897, 1898, 1899 and 1900, three or four years. I think I made the examination in the year 1905, and I looked for the names at that time in the latest directory.

530

I inquired from people I knew in Portland, old residents there that were acquainted and had a wide acquaintance at that time, to find if they knew of anyone by those names. That is all I did.

Cross-examination.

By Mr. WORTHINGTON:

I only inquired in Portland about the applicants in the Don Alexander cases. Portland is situated in Multnomah county. It is not a very large county. Most of the population is in the city of Portland. There are other counties adjoining Multnomah County, in which there are plenty of people. At the time I made my investigation, Portland had about 100,000 or 125,000 people. In 1898 it had about 75,000. I cannot tell you what population there is in the county, outside of the city. It is largely a suburban population. People there are in business in the city and have their homes outside. A notary public in Oregon is a notary public for the whole state, and he could take acknowledgments anywhere; and I found that in some cases, the notary also had jurisdiction in California, as well as Oregon. Out of the 27 Don Alexander applications there were probably a dozen people in Portland whose names would correspond with the names on those applications. It is possible that in Portland there were a good many people whose names did not go in the directory.

Mr. Worthington then takes up some of the applications: 531 for instance, 8809, John P. Brown. Witness says, I found a great many Browns in Portland at that time; but I did not find that there was a John P. Brown there. I found John, John A., John C., John H., John T. and John W. Brown. Aside from not finding the name of John P. Brown in the directory of Portland, I did not do anything. Aside from the looking in the directory, I think I talked with old residents there in Portland, and some citizens who were not so substantial in Portland, who had an acquaintance with the floating population. I made no investigation outside of Portland. There may be a dozen John P. Browns outside of Portland for all I know. There is no floating population in Oregon outside the City of Portland except in the city of Astoria. It is an agricultural country and generally speaking the people live at the same places they did 15 years ago.

In 8570, W. A. Stafford, I made inquiries only in Portland. I did not communicate with any persons who were supposed to be interested in these applications, to find out whether these applicants were in existence. I did not let Mr. Hyde, Benson, Schneider or Dimond know I was making the investigation. I did not ask them.

I made this investigation immediately after accepting my office on September 1st, 1903. I was there the rest of that year, and 1904, 1905, 1906, and until February 1st, 1907.

Witness then gives the number of applications and the cases where he found persons of the same names in Portland when he made his investigation, five years after the papers were signed. In some cases he found that people of the same names as those mentioned in the

532 application were living in Portland at the time he made his investigation, and some had been living there previously.

Application 8565, M. M. Long, no such person in Portland.

Application 8563, signed by Annie S. Murray. While I found no person of those initials, there was an Annie Murray in Portland in 1899.

8567, A. C. Murray. There was an A. C. Murray living there in 1898.

8573, E. E. Page. There was an E. E. Page there in 1898.

8574, A. H. Bean. There was an A. H. Bean there in 1898.

There was a cash deed marked in the Docket V 768, applicant Andrew Anderson. There were a great many Andrew Andersons in Portland at that time.

A. C. Murray ran a meat market out at Montevillo, which is a suburb of Portland.

Remembers a slaughter-house near Portland, which burned down three years ago, about the time I was investigating. Didn't make any inquiry among the men who worked in that plant. There *may* have been 50 or 60 people working in the horse canning factory.

Cross-examination.

By Mr. BIRNEY:

These directories I examined were gotten out by private persons. Don't know how many names were contained in the 1898 directory. Think they contained the names of practically every rounder in Portland. As a rule names of married-women living with their husbands were not in the directory, I think, unless they were employed and, as a rule, unmarried daughters living in the household were not in the directory unless they were at work. The names

533 of young sons were not in the directory unless they were at work. If the sons and daughters were living in their father's house hold, under 21 years, the names would not appear in the directory, unless they were working. They were eligible as applicants over eighteen.

Redirect examination.

By Mr. BAKER:

I did not see these people whose names I found in the directory such as A. C. Murray and E. E. Page. I made no attempt to see them. I did see some of the other applicants, but none of the Don Alexander applicants. If I found there was a real person whose name corresponded with the name in the application, I did not continue my investigation as to him, as far as the Alexander applications were concerned.

534 *Woodford D. Harlan.*

Direct examination.

By Mr. BAKER:

At present land attorney. First employed in the Land Office, December 20, 1865. Remained until 1887. When the Cleveland



administration came in, I was out a year and a half during the first administration, and during the whole of the second administration. After that I secured appointment as Chief of the Special Service Division, called Division P, in June, 1897. I remained from then until April 30, 1907, in the General Land Office. Was Chief of the Special Service Division from June 12, 1897, to April, 1903. Then I was reduced to fourth-class clerk and held that position until April 30, 1907, when I was dismissed.

Since the fall of last year, I resided at 3221 School Street, this city. Prior to that, from 1882, up to the time I moved to School Street, resided at Takoma, D. C.

The Special Service Division had charge of the special agents of the Land Office engaged in making examinations in the field regarding charges of fraud and illegal fenceings and depredations on the public lands of the United States. After the Act of June 4, 1897, the business relating to forest reserves was also put in this division.

A number of agents were put in the field to examine lands for proposed forest reserves, and I had charge of that class of agents, in addition to the special agents.

Don't think my exact duties as chief of this division were prescribed in writing. My duties were to assign agents in the  
535 field after they were appointed by the Secretary of the Interior; to prepare a letter stating what they should do and where they should go, and where they should be located. Then when they made the examination in the field they made reports to the General Land Office, to the Commissioner of the General Land Office. Those reports came through my division, passed through my hands, and I sent them to the different clerks in the division for appropriate action, according to the State or Territory from which they came.

After the reports came in, the different clerks examined these affidavits that were submitted by the special agents, and the report by the special agent on his examination and letters were prepared stating the facts as found against the individual, or against a homestead entry, if it was a fraudulent entry, and those letters came to me for initialing or approval. I approved them or disapproved them according to the necessities and facts of the case. If I approved them, I put my initials on the letters, and they went down to the Commissioner for his signature. Then they became official instructions or decisions. Then they were returned to my division and press copies sent out to the agents for their guidance.

Have known William E. Valk since 1884 or 1885. He was a clerk in the division when I took charge of it. After the lien selections commenced to come in, I assigned work to Mr. Valk for action. He had charge of the lien selections. His business was to examine  
536 the application of the party making the selection. He examined into the base land to see whether it was in a forest reserve. He examined the abstract of title furnished by the locator to see if it was correct and in proper form. If he found the base land in a forest reserve and the abstract all right and the

land applied for free and subject to entry, he prepared two letters—one to the register and receiver where the base land was located, and one to the register and receiver where the lieu selection was located; and those came to my hands for initialing, and from me went to the Commissioner for his approval or disapproval.

For some time, Mr. Valk had no clerks under him. Later he had clerks he assigned the work to. He was recognized as the person in charge of that work.

Mr. Valk was in my division up to March 1, 1901. He had one or two clerks under him who wrote letters.

A new division was created, called the Forest Division or Division R. All forestry work was transferred from my division to this new division, and Valk was transferred as one of the seventeen clerks that went with that work. He had charge of it after that.

I met Benson in the latter part of 1897 or the first part of 1898. I received a call from a young man from Captain Thomas' office in the Atlantic Building on F Street, stating that there was a gentleman there who wanted to see me, and I went to Captain Thomas' office and met Benson. Nobody else was present. Benson told me he was interested in forest lieu selections that were coming into the

Land Office. Nobody introduced us. We introduced ourselves. He said he would like to make some arrangement whereby they could be gotten out of the office. I don't know whether he said expedite or approve, but he wanted to get them out. That was the substance of the fact. I told him that could be done, but Mr. Valk, who had charge of the work in my division, would have to be seen. He asked me what the matter would be worth. I told him fifteen cents an acre. I think he objected to that, and wanted it done for ten cents. He asked me to have Mr. Valk call at 4 o'clock that afternoon, or as soon thereafter as he could, at Mr. Thomas's office. He didn't say where the lands were located. Don't think he mentioned any. Simply said he was interested in forest lieu selections.

Benson gave me his address as 507 Montgomery Street. I gave him mine as R. I. Smith, Box 182, Takoma Park, D. C., so that we could communicate with each other.

I asked him if he had any partners in the business. He told me he had not; that he and Hyde had been in partnership, but that they were unfriendly. My reason for asking about partners was that I did not want to do business with more than one man.

I returned to the Land Office and saw Mr. Valk and told him I had seen a gentleman by the name of Mr. Benson from San Francisco. I told him of our interview, and that Benson wanted to see him at 4 o'clock, or as soon thereafter as possible.

Next morning, I saw Valk, and he told me he had seen Benson.

Never saw Benson any more on that trip, but shortly afterwards he sent me a hundred dollar bill from San Francisco enclosed in yellow tablet paper. No writing on it. The envelope was addressed to R. I. Smith, Box 182, Takoma Park. In 1898, I received another letter with a hundred dollar bill in it, directed the same as the other.

My son-in-law, R. I. Smith, on one of these occasions got one of these letters, but he turned the money over to me after I told him it was mine.

Gave Valk about twenty dollars, maybe more, of the first hundred I received, and of the second gave him maybe ten or twenty probably. Valk became dissatisfied. About the 1st of November, 1903, I wrote Benson that Valk was dissatisfied with what he was receiving, and would not expedite any more cases or approve any more cases unless the money was sent to him. That ended my transactions with Benson in reference to the business of approving cases.

I don't recall that I ever acknowledged any receipt for money sent me by Benson. Think I returned the yellow paper.

The first two one hundred dollar bills I received were in 1898. Don't remember the months. I next saw Benson on Tuesday, October 3, 1899, the day Dewey had his reception. I received a note from a messenger, and I called on Benson at his room at the Arlington Hotel. He said he would like to learn the boundaries of proposed forest reserves, and the boundaries of existing forest reserves where they were increased or enlarged. I told him I could give him this information. He asked me if I could give him information in

539 matters in which he might be interested in reference to forest reserves. I told him I could. Shortly afterward I sent him a map of northern California, indicating the lines of several proposed forest reservations in that part of the State, and my impression is I sent him the Rogue Reserve, but am not sure about it. The Rogue River Reserve is in southwestern Oregon. I got this map from the working model in the office, and from the reports of Grant I. Taggart, who was the forest supervisor. What I mean by working map is that when a proposed forest reserve report comes in, recommending a proposed forest reserve it is put on the map, outlined to indicate where the lines will be. I got the data that I sent to Mr. Benson from this working map, and I got the reports from the files in the division.

After that, he sent me a hundred dollars in the same way. A little later, I sent him a map of the Rogue River reservation in Oregon, and afterwards he sent me another hundred dollars.

I think there was a written order, dated some time in February, 1898, in reference to the reports of these special agents.

I next saw Benson on May 28, 1902, at room 515, New Willard Hotel. Prior to that time, I wrote Benson that there was a matter of some importance about to be culminated, and I would like to see him. My impression is that his visit to Washington was in pursuance to that letter. The matter I wrote to him about was the consolidation of the San Francisco Mountain forest reserve in Arizona.

When he came to Washington, a messenger came to the office and brought a note from him. When I saw Benson, I told  
540 him that I had information of great and important value to him. I thought it was worth five hundred dollars. He said he would not buy a pig in a poke, but would chance \$250. I then told him the information I had was that the Secretary of the Interior,

the Attorney General and the Commissioner of the Land Office had arranged to enlarge the San Francisco Mountain Forest Reserves to include the railroad lands, and that I was acquainted with the persons who owned these base lands. Mr. Benson says: "You are too slow; I have that information already. My attorneys, Britton & Gray, are attorneys for some of these parties, and they have told me."

In the first part of this interview, Mr. Benson told me that he had an agent in Washington who had desk room in the office of Britton & Gray, and that he had him concealed in a closet in his room there and wanted me to see him. I declined, saying I would have no business with anybody but Benson. He asked me to step into another closet which adjoined the room he was in. I stepped into that room, and Benson closed the door. Then I heard the door of the other closet open and the door in the hall room. Benson then let me out of the closet, and I entered the room. While I was in the closet, did not hear any talking or walking.

At some time during this conversation, Benson said he would send me two hundred dollars to show his good faith. He went downstairs some time during the visit and when he came back he told me I would find something on the bed when I left. I found a fifty dollar bill on the bed, and he said he would send me two hundred dollars from San Francisco. After his return to San Francisco, he  
541 sent me another hundred dollars in the same way that he had sent the others. Don't remember whether I received the other hundred dollars.

I wrote to him in June, 1902, and again in November, 1902. In the June letter, I told him a letter had been received from a man named Zabriskie, indicating that Benson and Hyde were engaged in fraudulent transactions. My impression is I told him Schneider was the man who gave the information about these transactions. I told him this in both letters. I don't know whether I ever saw the Zabriskie letter when it came in the office or not, but I have seen it. I saw it prior to writing Benson in June. My recollection is I got the information I sent to Benson in my June letter from the Zabriskie letter, but I can't say where I got it. The letter naturally passed through my hands, and I could see the brief on the letter. I read the briefs on all the letters that passed through my hands when they came into the office. Could not tell at this late date how the letter came into the office.

"A. Why, if I saw it at all, it came directly under my—I have seen that letter and read it, but I don't know when I saw that letter first."

Don't remember when I saw the brief on that. Don't know where I got the information. I wrote to Benson in June in regard to the Zabriskie matter. I am not sure about the June letter at all. Don't think I knew of the Zabriskie letter in June.

Mr. McKee, of my division, wrote the letter to Holsinger  
542 in June, directing the investigation, and he came to me some time or other—I don't know when it was—and told me that he had written a letter to Holsinger and wanted me to understand that there was nothing underhanded about it. At that time I don't

think I knew about the Zabriskie letter, not until after he told me. I looked the matter up and found the letter to Holsinger ordering an investigation, and I informed Benson of it. I think that was the following November—it was after Holsinger's report had come in November, 1902.

Witness is shown the Holsinger report, and says: "I saw this letter. It passed through my hands, and was referred in its regular order to the clerk having charge of the dockets. My handwriting does not appear on it." The letter "P" down in the corner signifies that it was referred to the Special Service Division—"P"—of which I had charge.

I read this report, and directly afterwards informed Benson of the substance of the report.

My impression is I told Benson that Schneider had made charges indicating the manner of using dummies, and that Slack's name was mentioned as one who could give information, and I think I advised Mr. Benson to make peace with these people, and if he had any clerks, to see that they were loyal.

Witness is shown the order of February 2, 1898, relating to the secrecy of the reports of special agents, and says that is the one he had in mind when he testified in the morning. It was the Departmental decision of April 30, 1897, to keep the reports of  
543 special agents secret.

I had the Holsinger report in my possession just long enough to read it. Wrote to Benson probably the same day. Don't remember.

At this point the so-called Holsinger report, the genuineness of which had been previously proved, was read in evidence to the jury by counsel for the Government, the Court permitting it to go in evidence at that time, not for the purpose of proving the truth of it or any part of it, but merely for the purpose of showing that the witness had it before him when he wrote to Benson.

That report is as follows:

"EXHIBIT No. 351.

Department of the Interior,  
P. General Land Office,  
Washington, D. C.

Address only the Commissioner of the General Land Office.

"PHOENIX, ARIZ., Nov. 12, 1902.

"Hon. Commissioner, General Land Office, Washington, D. C.

"SIR: By letter 'P', W. J. M. June 18th, 1902, I was directed to investigate certain allegations made by one J. A. Zabriskie, of Tucson, Ariz. as to fraudulent entries under the Act of June 4th,  
544 1897, as amended by the Act of June 6th, 1900, in lieu of tracts in sections 16 and 36, within the Forest Reserves in California and Oregon.

At the time your letter was received I was in possession of orders to leave at once for Montana and make an examination of the Kootenai forest district. Later I received your letter 'P', of Sep. 30th, 1902, calling my attention to the same matter and requesting an early report. I, accordingly, upon my return to Arizona, sought an interview with Mr. Zabriskie and one J. H. Schneider, who preferred the charges that frauds were not only committed, but that some officer in the General Land Office was a party. I made several appointments with Mr. Zabriskie, but as he was actively engaged in the political campaign I was unable to secure a satisfactory interview with him until November 5th and 6th. Prior to that time I several times called upon Mr. Schneider but he preferred not to go into the matter in detail until his attorney, Mr. Zabriskie, could be present. Mr. Zabriskie is a prominent attorney here in the Territory, and is located at Tucson. He of his own knowledge, knows nothing of the alleged frauds. As the attorney for Schneider who is the informant, he came in possession of information which he asserts he believed should be brought to the notice of the Department. He advised his client to lay the whole matter before some agent of the Government, and ask for an investigation.

Mr. Schneider is a comparatively recent arrival in Arizona, having resided at Tucson only about 10 months. He is engaged in  
545 the real estate and broker business, under the firm name of the 'Brady-Schneider Commission Co.' He has a good appearance, moves in good society and is considered, even with so short a residence in the Territory, as one of the most progressive and substantial citizens. The story which he tells, however, presents a character in direct opposition to what he appears at the present time, as he openly confesses to a career, covering several years, of a business of perpetrating land frauds.

Mr. Schneider's story is as follows: From Jan. 1879 up to Jan. 1, 1902, Mr. Schneider was in the employ of F. A. Hyde and John A. Benson, in the capacity of a clerk. All the business was done under the name of F. A. Hyde, Benson not being known in the concern, although he has an equal interest in the business. The business of the concern was real estate and brokerage and that of buying and selling forest lien-land scrip. During the past three years Schneider was one of the firm's most trusted employees and was exclusively engaged in the Land Department.

"The firm of F. A. Hyde was quick to see a speculation in handling lien-land scrip and not content with legitimate business conceived the idea of securing the school lands by locating them under false names or with what was known as 'dummies.' The first work was done in the Sierra Forest Reserve in California.

The methods employed were to forge some name to an application for the state school lands. A notary public, who was also a party to the fraud, for a certain consideration, certified that the  
546 persons appeared before him and was known by him to be the identical person who signed the application. These applications were made in the state land offices and title secured. Bogus powers of attorney were executed in the same manner in favor of

F. A. Hyde and in due time the scrip was secured and placed on the market. For some time it was the practice to hire irresponsible persons to make applications for the state school lands, paying them \$10 each for the use of their names. In this way many genuine signatures were secured. However, it became inconvenient to secure such persons and forgery was resorted to as a matter of convenience and economy. The method pursued was this: Advertisements were inserted in the San Francisco papers, (Hyde's office was in San Francisco, Calif.) for stenographers and bookkeepers. As high salaries were promised many answers were received; being applications for the advertised positions. The names signed to these letters of inquiry or applications were clipped from the letters and these formed the basis for 'dummies.' One case will illustrate their methods. Jas. McAvoy of Martinez, Calif. applied for one of the positions. Schneider was directed by Benson to use this particular name, changing, however, the given name from Jas. to Calvin A. A blank application was now made out for Calvin A. McAvoy, Schneider using the genuine signature of McAvoy as a copy and carefully imitating the handwriting of McAvoy. Not only was this name signed at this time to the application for school land, but for fear that later the forgery might not correspond with the writing on the application, the name was signed to every document necessary to

547 complete the entire transaction from the application to the deed to the U. S. Power of attorney to Hyde, &c. Some of this work was done by another clerk by the name of Walter K. Slack, but the most of the 'dummies' were made by Schneider and his wife. In the manner related hundreds of fraudulent entries were made, Hyde and Benson furnishing the genuine signatures upon which to fabricate a fictitious name and a bogus entryman.

"As this business grew it became apparent to Hyde and Benson that to keep up the supply of scrip they must needs resort to other frauds so they embarked in the business of making Forest Reserves, as far as possible according to their own ideas and interest. They used every possible influence to secure the creation of forest reserves and also in many instances were instrumental in fixing the boundaries so that every acre of school land which was unlocated, which could possibly be included, was made a part of the reserve. Schneider alleges that to successfully carry out their scheme it was decided that not only should some of the Government agents in the field be 'fixed,' but it was decided to send one Harry Dimond, an employee of Hyde's, to Washington to interest some Department clerk so that they would know every move made in the Department of the Interior. Dimond went to Washington on this mission during the early summer of 1901 and soon notified F. A. Hyde by letter that he had made a satisfactory arrangement with a clerk in the Department whereby information could be furnished, the consideration being, that when the scrip was secured the clerk should receive 2

548 cents per acre for his services. Thereafter, Schneider states, they received telegrams and letters from this clerk 'B.' They also employed an attorney in Washington by the name of Kegwin to push the forest reserves and to look after other business



in the Department. After the creation of the Sierra Forest Reserve the Hyde concern entered actively into the agitation in Oregon and California of movements looking to the creation of forest reserves and in every instance where one was created they were instrumental in at least fixing some of the boundary lines so that school lands would fall within the reserve. Their idea was to include every acre of school land possible. When it was known where these lines were to be located the 'dummy' locations were made covering every acre of unappropriated school-land and private lands were secured by bond or purchase as far as possible. The 'dummy' locations were not filed in the state land offices until word was received from Washington that the recommendation for the reserve had been forwarded to the President. When this was known the 'dummy' applications were filed, the officers of the state land offices being party to the frauds and receiving an agreed-upon-commission.

"Schneider implicates two Government agents in this fraud i. e. Forest Sup. B. F. Allen and Special Agent Prior. He states that early in 1900 it was decided in the office that it was advisable to secure the cooperation of Sup't. Allen and he was accordingly invited to call at the office and soon after he did so; that thereafter he was often in the office when in San Francisco, always entering the private office by a side door. Soon after this Hyde informed Schneider in a casual way that he had to take Special Agent 549 Prior into the secret and he was instructed to give Prior the liberties of the office. Schneider states that both Allen and Prior were freely consulted concerning the status of proposed reserves and were furnished maps made by Schneider of these reserves as they were proposed by Mr. Hyde. That these maps were made to meet as far as possible the requirements of the Department, but always with a view of including as much unoccupied school land as possible. Schneider claims that he himself, for Mr. Hyde, actually drew the map of the Proposed Lassen Forest Reserve.

NOTE.—(Not yet a reservation—only withdrawn.)

That the first map was destroyed and amended one formulated so as to exclude certain lands owned by wealthy men who threatened to start a strong opposition against the reserve. The general mode of procedure was to insist themselves in a good cause, with a special object of securing boundaries to best suit their interests.

When questioned as to whether he had witnessed the passing of money considerations to Sup't Allen and Special Agent Prior, Schneider stated that Allen once asked for a loan of money and was accommodated but he did not know to what amount. Prior was presented with a thorough-bred Durham bull about two years ago. Schneider paid for the bull and asked Mr. Hyde to what account it should be charged. That gentleman replied 'Oh, charge it to profit and loss.' It was a present to old Prior.

"Schneider could only remember a few of the names used 550 as 'dummies.' He named to me the following: Jennie P. Blair, Portland, Oregon, Mary D. D. Tenyson, San Jose, Calif.; Calvin A. McAvoy, Martinez, Cal. A. Appett, Oakland,



Calif.; and Elizabeth Dimond, 611 E. 15th St., Oakland Calif. This last named address was the address of Schneider. He remembers this name because there was some trouble in securing the scrip and considerable correspondence resulted with the Department in which one letter was addressed to the supposed Elizabeth Dimond by the General Land Office.

"The name of D. Alexander, a notary public located at Portland, Or., was given me by Mr. Schneider as one of the Notaries who attached his certificate to the fraudulent applications. Schneider alleges that about three-fourths of the school entries in the Cascade Forest Reserve in Oregon, on the school sections, were bogus. All the school section entries in the Lake Tahoe Forest Reserve were bogus as were most of them in Zaca Lake, Pine Mountain and the additions made to the San Jacinto Forest Reserve.

"Surveyor General G. M. Wright of Calif. was implicated in these frauds and always managed to file the 'dummy' entries ahead of bona fide applicants. Schneider states that while in Wright's office, where much of his time was spent, bona fide applicants had several times asked for information concerning lands in a proposed forest reserve district but none ever secured a filing although the land resired was then vacant. If the citizen knew the land was vacant and came in with an application, Wright would inform him that

the office was very busy and that there were many other applications which had not been placed on *on* the record. The  
551 person was advised to leave his application, duly executed, with the assurance that it would receive attention in a few days. As soon as the bona fide applicant was out of the office Wright informed Schneider of the application and Schneider at once prepared a 'dummy' which was filed on the land and the bona fide applicant was duly informed that a further examination revealed the fact that there was an application for the same land filed some days ahead of his application. Trouble arose several times between Wright and Schneider as to the amount or number of entries upon which Wright was entitled to a commission. At such time Schneider would suspend business and telephone to Hyde, who in a day or two was always able to satisfy the Surveyor-General. At one time last year Ex-Surveyor General Gardner insisted that he should have a share of the spoils which he had enjoyed while in office and upon refusal being made Gardner complained to Governor Gage that certain school section applications were fraudulent. The Governor refused to sign the patents and the claims were suspended until Hyde took Gardner to his office and paid him to secure the Governor's signature. Accordingly Gardner visited the Governor, reported that he had been mis-informed and the patents were signed.

This is in detail the story related by Schneider, who makes no excuse for his own acts and no secret of his present motive in informing against his former employers. He declares that he seeks  
552 revenge for reasons he will state if requested to do so. He is willing to swear to all the facts stated and to follow the matter up and furnish all the testimony possible. He claims

that he could recognize almost all of the 'dummy entrymen' if a list of the names were furnished him.

It was for the purpose of identifying the 'dummy entries' that Mr. Zabriskie requested a list of the entries of school sections in the Forest Reserves of Cal. and Oregon, especially those named in this report.

"The only tangible evidence of these alleged wholesale frauds that I can now obtain is the testimony of Schneider. Before he will go fully into this matter he desires an understanding that he will not be prosecuted. The only excuse made by him for his part in the frauds was that he was gradually worked into it by being paid higher wages than the other men in the office and the assurance by Hyde and Benson that if he would not do it they would discharge him and secure someone else. They finally failed to pay different sums promised and Schneider quit.

"Schneider asserts that all of the lands recently withdrawn from settlement by order of the Secretary of the Interior, in California, are under the surveillance of the Hyde combine and that 'dummies' have already been prepared covering the school lands within the areas withdrawn, preparatory for filing in the state land office.

Respectfully submitted,

S. J. HOLSINGER,  
*Special Agent, G. L. O.*"

553 (The following endorsements appear on the back of the above report:)

"U. S. General Land Office. Received Nov. 18, 1902. 24/65. 191385. S. J. Holsinger, Special Agent, G. L. O., Phoenix, Arizona, November 12" 1902. Reply to G. L. O. Letter 'P' W. J. M. June 18" 1902 and Sep. 20-1902, in relation to alleged lien land frauds in California and Oregon reported by J. A. Zabriskie of Tucson, Ariz. Ack'd Nov. 18/02." "P".

Cross-examination.

By MR. WORTHINGTON:

I saw the Holsinger report directly after it was received in the office. It should have reached me the same day it came into the office. It would have come down from the place where all these communications were received in the Chief Clerk's office and distributed to the various divisions where they belonged. The

554 briefs are put on them in the Record Division, where they are distributed.

The stamp on the Holsinger report, "U. S. General Land Office, Received Nov. 18, 1902", means that is the day it was received in the Chief Clerk's office in the Registry Division. It was marked "Acknowledged Nov. 18, 1902", and the Registry Division initialed it and sent it to Division P. The letter P was put on in the Registry Division to show what division it would go to, so that the messenger would know where to take it. There is nothing in that paper that originated in my office. In the ordinary course of business, this letter would come to the Registry Division, and from there come right to me at my desk. I say that that letter came to me when

it came down to Division P. Came directly to me before any other clerk in my division had seen it. It did not go to McGee after office hours, and immediately after its receipt he didn't take it to the Commissioner and leave it with him or leave it with the Assistant Commissioner. I think it would come direct from the Registry Division to me. I will not state that it did not go directly to McGee instead of to me, and that he didn't take it right up to the Commissioner, who kept it over night. I don't know how it came to me, but I saw it on my desk and read it over. Mr. McGee had ordered Holsinger to make this investigation, and it may be that he had been looking for the report and may have seen it before I did. My recollection is that I saw the report first and took it to the clerk who was distributing the mail. Mr. McGee was looking for the report.

555 Direct examination (continued).

By Mr. BAKER:

My recollection is that I took the report to the clerk who was distributing the mail. I never saw it again until one day during this trial.

Cross-examination (continued).

By Mr. WORTHINGTON:

Miss Ross is the clerk who filed the papers. She had charge of the docket at that time. She is still there.

Direct examination (continued).

By Mr. BAKER:

After I wrote to Benson about this Holsinger report, I don't recall that I received any answer from him.

I saw the weekly statements of work sent in by Special Agent Steece, who was investigating these land frauds with Mr. Pugh. Directly after I ascertained that Pugh and Steece were making an investigation of the Schneider charges, I notified Benson.

In March, 1903, Steece returned from the West and called at my room. I asked for a copy of his report, that it might be of use to me. He told me he had no data, that all of it was with Pugh, and that he could not give me a copy of the report. I wrote Benson that I had seen Steece, and was trying to get a copy of the report, and thought the work of trying to get the report was worth five or six hundred dollars. In answer, I received three let-

556 ters. The first one enclosed two one hundred dollar bills, the second one contained two hundred dollars, and the third one contained one hundred dollars—all in hundred dollar bills. All sent just the same as the others had been, except, it seems to me, there was a short note in one of them, but I don't remember what was in it.

I wrote to Steece after he returned to Montana, and asked for a copy of his report. I never heard from him. I don't remember

any other letters I wrote to Benson, except to say I was trying to get the report.

The last of October or 1st of November, 1903, I wrote to Benson, after I had been interviewed by William J. Burns. I told Benson the investigation was going on, and that I was holding "the gentleman from Maryland"—meaning Valk—firm, and that he was not telling anything.

I next had an interview with Benson on the 17th of December, 1903. I don't recall that I wrote him any letters in the meantime.

At the suggestion of Burns, I wrote Benson two letters. On November 6, 1903, Burns dictated a letter to me to Benson. I put it in an envelope and addressed it to Benson at 507 Montgomery Street, and marked the envelope "Personal." I wrote Benson a letter on the 9th or 10th of December.

On the 17th of December, I saw Benson at room 206 of the New Willard Hotel. I had seen Valk that morning, and he told me that Benson was in town. I then went downstairs, where Burns

557 was conducting an investigation, and told him that Benson was in town. He informed me that he knew it, and that Valk had seen him. I think he told me Benson had paid Valk one hundred dollars. He wanted me to go and see Benson.

I called on Mr. Benson at his room and told him that Mr. Valk had told me he was in town. I asked him when he arrived, and he informed me, and he said "the fewer interviews we have the better," and that he had thought of sending a messenger out to my house. I told him that I was on leave of absence, and had been from the preceding Monday, and that I could see him at any time he might designate. I told him that I had written him an important letter on the 9th of December, and also two other letters a short time prior thereto, and I asked him if he had received the former two. He said he had, but had not answered them, because he would soon be in Washington, and he said, "Here I am."

He asked me what news I had, and I told him that the subject matter of the important letter which I wished to write him on the 9th of December was that I was acquainted with the stenographer, and that the stenographer wanted to make something out of this business, if there was anything in it; that he wanted about \$1,000; but I told him I thought that was too much, and that \$500 would probably be about right.

Mr. Benson then asked me what I had learned. I told him that I couldn't learn anything, but that from what the stenographer had told me the investigation related chiefly to Hyde and

558 Mr. Hermann; that his name was occasionally mentioned. Mr. Benson said that he was not in partnership with Mr. Hyde, and that there was a dissolution and an unfriendly feeling between them; and that he did not see why he should pay out money for matters that did not interest him, and therefore he did not care to see the stenographer. Later he asked me if the matter of the stenographer could not be attended to later by correspondence at San Francisco. I told him I thought it had better be attended to at once.

He asked me what inquiries were being made. I told him that they were investigating generally the whole office.

He asked me if I knew anything of "poor old Barnes," and I told him that I did not; but that I had seen him come out of the room where the investigation was being conducted. He asked me if I could find out something about Mr. Barnes, and I told him that I didn't know, but that I would try, and let him know tomorrow. I asked him also if he knew the chief of the Forestry Division, and he said he did not. I asked him if he knew that Mr. Hyde had any business transactions with the Chief of the Forestry Division, personally or through Mr. Allen, and he said he didn't know; but he thought he might have. Then he referred to the Cascade Forest reserve in Oregon, to an extension of the limits of the Cascade Forest Reserve in Oregon, and said that someone had sent Mr. Hyde a telegram, and by an error they omitted to state whether the lines were north or south of the base line; that the error caused Mr. Hyde to get some of his applications on the wrong side, and

559 that he only got 12 out of the 23 sections that were embraced in the extended limits, while he, who knew the topography of the country, had figured it out in his own head and had secured 23 of the 24 sections, and that thereby there was a conflict between his selections and Mr. Hyde's.

I also asked him if Mr. Hermann was interested in the matter, the Commissioner of the General Land Office, and he did not reply at once, but he said that if Mr. Hermann wanted any letters of recommendation he had a pile so high (indicating), indicating with his two hands. He said he was going to call on Mr. Hermann that afternoon. He also said that certain parties had called on the President and had informed him that last year 634 prosecutions had been commenced by the Government for frauds upon the public lands, and that only four convictions had been secured; that those parties were greatly displeased; that there were 8,000 forest lien selections and 27,000 timber and stone entries that were suspended on the general allegation of fraud; that these parties wanted to know from the President if he was going to stand for that suspension, and that these people were greatly displeased. He said that there were a number of lien selections in the name of C. W. Clarke which were absolutely correct, and that he was going to see his attorneys, Messrs. Britton and Gray, of this city, and see if they could not get these Clarke cases relieved from suspension. He said he was going to call on a certain Senator that afternoon with reference to the same matter, that is, with reference to the 8,000 forest lien selections and the 27,000 timber and stone entries that were suspended on the general allegation of fraud, and see if the

560 President would stand for that order of suspension, and thereby affect the political status of the States of California and Oregon.

He stated that I had also promised him certain reports which he had not received. I told him that the persons from whom I expected to get the report had informed me of the parties making the investigation that I had asked for the report. Mr. Benson re-

plied: "That left you in a bad predicament, did it not?" I told him no, that I didn't think so, because the agent who made this report was under my supervision and I had the right to know what his report was.

I believe that is all the conversation on the 17th of December. Mr. Benson, sometime during the conversation, asked me how I was off for pictures, and I told him that I was pretty scarce at present. He said that he was scarce also, but that he expected something; that he was going to New York tomorrow, and he would be back next week, and for me to call tomorrow at three o'clock and he would have some pictures for me."

It was understood between Benson and myself that a "picture" meant one hundred dollars.

The next day, the 18th of December, pursuant to Benson's request, I saw him about a quarter of three. I told him the reporter would not tell me everything, but from what I could gather Barnes had made a statement, and that Clarke, a clerk in Mr. Hyde's office, I thought had made a statement, and a man by the name of Goldberg, of San Francisco, had made a statement, and that Miss Glover,

of Benson's office, made a statement. Benson said Miss  
561 Glover never had made a statement; that someone had taken her out of his office and interviewed her, but she had made no statement and they had gotten nothing out of her. I told him Slack had made a statement, and he said he knew Slack had made a statement. I told him Schneider had made a statement, and he said he knew Schneider had not; that the Government had tried to get him to make one, but he had refused.

He asked me if a man by the name of Shellington had made a statement. I told him the name was not familiar to me. He said he didn't know anything important, anyway.

"Q. Do you know who Shellington was? A. I don't know who he was, but I think he was his clerk, Mr. Severson or Mr. Leverson. I think the sound of it fooled him. That is only an inference though."

I told Benson the Government knew he was in town, and he was being watched. There was a man down in the lobby of the hotel who looked like Burns. Benson asked me to describe Burns, and I did so. His personal appearance, age and address. Benson asked me if it was not dangerous for me to come up there. I told him I didn't think so, because I was not sure that the man downstairs was Burns. He asked me if I did not want to go into the bath room. I told him I did. I went in and found four fifty-dollar gold certificates lying on the basement of the wash-stand. I took possession of those, and came back into the room. Benson said he was  
going away that afternoon, and I bade him good-bye. I went  
562 down to the lobby and met Burns, and we went up to the

Ebbitt House and I turned the four fifty-dollar gold certificates over to J. E. Wilkie, the Chief of the Secret Service Division of the United States Treasury. He initialed them on the back, with the date, I think, and I put my initials on the front of each one of them.

Some time during the conversation, he said it was reported that Barnes had made a clean confession, and wanted me to find out if it was so. I told him I would let him know the next day.

The letter that Burns dictated to me to send to Benson was dated November 6th, and in it I told Benson that notwithstanding all of the bluster in the newspapers that they were not finding out anything tangible at this end, that they had interviewed a number of clerks and had found nothing. I think I said something in that letter about that the special aim seems to be at Hyde.

In the other letter I wrote Benson, I asked him whether I could write him an important letter, and told him to examine the letter to see if it had been tampered with, and said, "Address me as heretofore, only give General Delivery, Washington." I told him I had mailed the letter at the railroad to avoid showing the Washington stamp.

In speaking to me in regard to matters before the Land Office, Benson never mentioned any names or his interest in lands. I never knew what the cases were at all. Never knew in what cases he was interested. He mentioned the name of C. W. Clarke once, and said

there were a number of lieu selections in the name of C. W. Clarke that were absolutely correct, that he was going to have his attorneys, Britton & Gray, make an effort to get them relieved from suspension.

J. J. Barnes had a desk that related to school lands of the different States and Territories where the States had made lieu claims for the lands that had been lost to the State—who had selected other lands in lieu of them. He had charge of preparing these lists and submitting them to the Secretary for approval.

#### Cross-examination.

By MR. CAMPBELL:

Have known John A. Benson since the fall of 1897 or the spring of 1898. He was always friendly and liberal with me.

As near as I can recollect, the contents of the letter of the 5th of November, 1903, to Benson were: "Notwithstanding all their clamor in the newspapers, they have found out nothing tangible or definite at this end. They have interviewed a number of clerks but found nothing tangible. This I learned from the stenographer, who is a personal friend of mine." Some of the facts in that letter were true, and some were false. It was false to say they had found nothing tangible against Benson. I wrote this letter which was untrue at the request of William J. Burns, to a man who had been friendly and liberal with me.

The next letter I wrote on the 9th of December. It was also dictated by Burns. I asked Benson where I could address an important letter to him. I can't recall that in any of the letters

I asked Benson to come to Washington. Don't know what Burns had in his mind. I was acting under the dictation of Burns.

In the early part of November, 1903, I told the Secretary of the Interior of my relations with Benson. He is the first man I told.

I will be sixty-two years old on the 23rd of this month. Probably



my memory is not as good now as it was three or four years ago. After I saw the Secretary, I saw Mr. Burns and wrote these letters at his dictation. Had no information that Benson was coming to Washington until Valk told me he was here. Then I told Burns. I had no object in view in telling Burns. Burns did not give me any special instructions as to what to do or say with Benson, but Burns said something about the stenographer. I asked Burns if he should offer me any money what should I do, and he said accept it, by all means.

I heard Benson had given Valk one hundred dollars. My presumption was that he would give me money. I didn't know why he had given Valk money. He did not owe me any money.

"Q. Now, sir, is it not a fact that William J. Burns, the Secret Service Agent of the United States, instructed you to go down there and try to get Mr. Benson to offer you money? A. I expect that was his object, yes sir.

"Q. He told you that; did he not? A. I don't think he did.

565 "Q. Then why did you expect that was his object? A.

Mr. Benson most always gave me money when I went to see him, on all occasions. I asked Burns if he should offer me money whether I should receive it.

Then I went down and saw Benson, and told him that the subject matter of the important letter I wanted to write him, as mentioned in my letter of December 9th, was that the stenographer wanted to know if there was anything in the business; that he wanted to get about a thousand dollars. I told Benson the stenographer wanted to know if there was anything in this business; that he wanted to get about \$1,000 out of it. I told Benson it was too much, and he said he would read the notes for five hundred dollars.

"Q. Did the stenographer tell you that? A. The stenographer and Mr. Burns did. It was in the presence of those two people that the conversation occurred."

"Q. And they told you to tell Mr. Benson that; did they not? A. I don't know whether they did or not; but that is what I told Mr. Benson."

Mr. Burns did not intend that the stenographer should give Mr. Benson any information.

I don't recall that Burns told me to tell Benson what I have stated about the stenographer's notes. How I came to tell Benson that the stenographer wanted \$1,000, or that he would read his notes for

566 \$50, was that it was my method of introducing the subject matter of that letter that I wanted to write him. What I told him about the stenographer's notes was not true.

"Q. Why did you tell him that? A. I went there at the suggestion of Mr. Burns to find out, I presume, what I could learn with reference to Mr. Benson and this investigation.

"Q. Learn about what? A. The investigation that was going on and who was interested in it. I went there to find out, I presume, what Mr. Benson would tell me. I had nothing in my mind as to what I went there for. I went there at the instigation of Mr. Burns. I was simply a tool.



"Q. You went there, then, as a tool of Mr. Burns, to trap Mr. Benson; did you not? A. Well, I presume that was Mr. Burns' idea in sending me there. I was trying to assist the Government.

I testified twice in New York and once in San Francisco. I testified before Commissioner Shields in New York that I was helping the Government make a case. I testified that my conscience troubled me, and it does yet.

"Q. Did your conscience trouble you to such an extent that you thought it was necessary to tell an untruth? A. I thought anything was necessary that would help the Government make a case.

"Q. And you think so now, do you? A. I do, so far as the truth is concerned in the testimony; yes, sir.

567 "Q. But you did not tell Mr. Benson the truth? A. No, sir.

"Q. And you did it to help the Government make a case? A. So far as I know; yes, sir.

I did not tell Benson the truth, and what I told him was to help the Government make a case.

I testified in New York that I was willing to do anything that I was asked to do in order to help the Government make a case against Benson, and it was not for me to decide whether it was right or wrong. That testimony was true. It was not my business whether I told a truth or a falsehood. I did just what I thought was necessary to get evidence. I testified that way in New York, and I have not changed my mind. Anything that I can testify to that is true I will testify, and I would be willing to help the Government in any way I could. I will get any testimony I can and help the Government to get any testimony I can, because I think it is my duty.

"— Why is it your duty? A. It is the duty of any man to do that to assist the Government.

"Q. The duty of any man to tell a falsehood to get evidence? A. If he is acting for the Government, in the interest of the law; yes, sir.

568 "Q. That is the way you consider it; is it? A. Yes." The Secretary did not discharge me when I told him of my connection with Benson. I remained in the Government's employ until April 30, 1907. I was there more or less for thirty or thirty-five years.

When I met Benson in Captain Thomas' office he said he was interested in forest lieu selections that were coming in, and that soon they would be coming in in large quantities; and he wanted to get them out, and wanted to know if he could not make some arrangement whereby he could get them out of the office, and approved. I understood he wanted to get them through as quickly as possible, and with as little trouble as possible.

"Q. Did you understand that you or anyone else was to do anything illegal or unlawful in that regard? A. No, sir.

I understood the lieu land selection business and knew what papers came into the office, and my understanding is that Benson wanted us to examine these papers as expeditiously as possible, and in that way agree to pass them through the General Land Office. I presume that

was in his mind. Of course, that was in my mind. It never was the intention that any selection should be passed that was not valid; nor did Mr. Valk. I of course had nothing to do with the examination of the paper.

He told me he had no partners; that he had been in partnership with Hyde, but that they had been unfriendly. He did not say how long before that he had been in partnership with Hyde. In Captain Thomas' office, in addition to Benson speaking about not  
569 being in partnership with Hyde and that they were unfriendly, we discussed the compensation. I mentioned fifteen cents as fair. Benson wanted it done for ten cents. I told Benson that Valk in my division had exclusive charge of these matters and would have to be seen, and that whatever arrangement Benson made with Valk would be satisfactory, and that I would have Valk see him; but I said the payments would have to be made through me in currency, and I gave Benson the name of R. I. Smith, Box 182, Takoma Park. That was the first time I had ever had an interview with Benson. I had never even seen Benson before, except once that I was out in San Francisco on Government business, but even then Benson didn't see me. The substance of what Benson said in that interview with me was that he wanted to make some arrangement to have his individual cases expedited through the Land Office. I did a great deal of the talking, but that was the substance of his conversation. Benson didn't say anything about his being willing to tip. Never heard the word "tip" from Benson. Never heard the word "tip" in New York or San Francisco in reference to this case.

Witness in his New York deposition says that he don't remember whether anything was said about Hyde or not at that interview at Thomas' office; that is, that he asked Benson whether Hyde was in partnership with him, and Benson told him no, that Benson was doing business on his own responsibility. After my conversation with Benson in Captain Thomas' office in 1897, I next saw him on  
the 3rd of October, 1889, about eighteen months elapsed.

570 Valk and myself were to equally divide the money Benson gave. I got two hundred dollars from Benson between the time I saw him late in 1897 until the next time I saw him. Presume it was for cases that had been approved by Valk. Of the first hundred, I gave Valk twenty dollars, and of the second hundred twenty dollars or probably ten dollars. Don't remember which.

"Q. Why didn't you give him his half? A. Well, I was hard up at that time and couldn't let him have it all."

I never have given him his half. That was all I received up to 1899 for expediting the cases. I have never received anything more on that account.

Valk objected to the fact that I was taking the lion's share of the money. That ended my connection with it. Valk and Benson had other arrangements afterwards.

Next saw Benson on October 3, 1899 at the Arlington Hotel. Cannot give the number of the room. I could not give the numbers of the rooms I have testified to at the Willard, except to identify them by the register of the Willard. I went to the Arlington to identify

the room, but the register had been lost. I wanted to find out the exact rooms. I had no independent recollection of that, and went to the hotel records to find out. Don't remember when I did this. Think it was in 1903—before I testified in New York. Did this under the instruction of Burns. Saw Benson in his room at the Arlington. He wanted to know if I could give him the outlines of the proposed forest reserves and the expanded limits of existing forest reserves, when existing reserves were enlarged, and I told him I could. There were records of these in the Land Office, and all I gave him was what appeared by the records in the office.

I made a map of a reserve that had been declared in the northern part of Northern California. Reservations proposed were made by the reports of Taggart and Allen. Of course I don't know what publicity had been given to the reports of Taggart and Allen. No one could have gone to the General Land Office and have gotten that map, because it was a privileged communication. The reports of those agents, Allen and Taggart, were privileged. Privileged against everybody, so far as I know. Written rule of the office. The same rule exists today.

The instructions to the special agents were that they should interview all the people in the neighborhood who were in any wise interested. There were no instructions that they should be published.

I drew the instructions myself. I wrote the instructions to Taggart. There is no instruction that I am familiar with that directs him to publish. These instructions directed the agent to name a paper in which publications might be put.

There is read to the witness this portion of the instructions:

"In addition to making a personal examination of the lands, you should interview the residents of the vicinity who are familiar with the lands in question, and obtain statements from them covering the above points, and forward the same for consideration in connection with your reports. You should also, in each case, report the newspaper of general circulation nearest the land in question, in which it is most desirable that a notice of the proposed reserve should be published, in order to insure all parties whose interest may be affected having timely notice of the contemplated withdrawal of the lands."

Yes; those were the rules of the Land Office, but they didn't direct any publication. They simply requested the agent to designate a newspaper in which publication might be made.

"Q. Why did you want a newspaper designated, then? A. That was probably a relic of the old instructions under the Act of 1891."

That act was to create the reserves by proclamation of the President. The agents then were directed, similarly to sections 6 and 7, to interview people on the reservations and ascertain their wishes; and if they had any objections, they were directed in that circular of May 15, 1891, to publish, and they did publish; but in these instructions they were simply to report a newspaper. That is the way the old instructions of May 15, 1891, were changed. That is the only change I know of in the instructions.

The difference between instructions 6 and 7, as I understood it, was that the first instruction directed agents to prepare a notice and publish it, and then their accounts were sent here for adjustment. 573 On the second instruction, if they published the notice without designating a paper and getting instructions from the Commissioner, their accounts would be suspended.

In the early part of 1900, the forest reservations which had been made and those which were contemplated in the year of 1900 were submitted in public documents to the Congress of the United States. This information was prepared in my division and submitted to Congress. Not only those reserves which had been opened and declared, but those which it was proposed to declare. I am sure it included the proposed reserves, and that document became public.

"Q. How long after that report had been sent to Congress was it that you gave Mr. Benson this map? A. It was not after it at all; it was prior to that."

I did not testify that it was in the year of 1902, after this report was sent to Congress, that I gave Benson the map. It was in the fall of 1899 I gave him the map.

Those instructions you called my attention to were general instructions to each forest officer. No special instructions given to Allen or Taggart that I recall; but they were acting under instructions of a letter dated February 18th, I think, or somewhere along there.

I took a portion of the map of northern California, a state map in the office, made the limits of the proposed reservation in that region, and marked them out in pencil and sent them to Benson.

The second interview I had with Benson was at the Arlington Hotel, and I sent this map very shortly afterwards. At 574 this second interview, Benson told me he would like to get the boundaries of the proposed forest reservations and the limits of the enlarged reserves. I told him I could give it to him. Nothing was said about money, but after I sent the map to Benson he sent me a hundred dollars.

As a matter of fact, from the first interview I had with Benson, there was not a word said about money, except the ten or fifteen cents an acre for the approval of new selections, which happened in the first interview. After that I did what I could for Benson and sometimes wrote a letter to him, and told him that it was worth so much, and sometimes he sent me that much and sometimes he didn't. That is about the substance of it. When Benson spoke to me about the map, he didn't say anything about pay to me. He did not agree to pay for it. There was no agreement at all. My understanding was that he would pay me. I sent him the map, and he sent me the 58100

The next time I saw Benson in Washington was on May 28, 1902. I know the date because I examined the records of the Willard Hotel, at the suggestion of Mr. Burns. I examined the record sometime in the spring of 1903, because I had no independent recollection of it, and wanted to ascertain the exact date. I am now testifying from my examination of that record.

At that interview, Benson told me he had an agent in Washington.

He had desk room in Britton & Gray's office, and wanted me  
575 to meet the agent. He said he had him in the room, in the  
bath room. I told him I would not meet his agent; that we  
must have our transactions between ourselves. I think Mr. Benson  
came to Washington on a letter from me about the San Francisco  
Mountain Reservation. I don't remember whether the Aztec was  
in it.

One of the reasons I wanted him here was because I wanted to be  
the agent to sell that land within that reservation for the owners,  
and I wanted to give him certain information about the base lands  
that would be in the new reservation, as it was about to be created.  
I don't remember about the Aztec being in the San Francisco reser-  
vation. Don't think the Aztec Land & Cattle Company had their  
lands within that reservation until it was consolidated.

I brought Benson here with reference to the San Francisco forest  
reserve, and told him I had information of great importance. When  
he came, I told him it was worth five hundred dollars. He said he  
would not buy a pig in a poke, but would chance \$250. It turned  
out that Benson had the information before from the attorneys of  
the people who owned the land.

"Q. But you insisted that he should pay you something? A.  
He agreed to. He bought a pig in a poke.

"Q. You insisted that he should pay you something? A. Cer-  
tainly I did."

Pay me for the information I had given him. I didn't  
576 know that he knew it before I told him. I didn't think the  
information was public property. These attorneys knew it  
because they represented the owners. The public could not have  
gotten the information from the division of which I had control,  
but the Secretary of the Interior, the Attorney General, and the  
Commissioner of the General Land Office were negotiating with the  
owners of large tracts of land in Arizona to throw the entire body  
into a forest reservation, and these owners were represented by  
Britton & Gray in Washington. The records, though, were secret  
in the Land Office. The Commissioner of the General Land Office  
was interested as one of the contracting parties. No secrecy between  
the contracting parties; no, sir.

The proposition was to enlarge the reservation and give the rail-  
roads and the people who owned the other the lieu scrip. I think  
after that it was the subject of a report to Congress. There was some  
correspondence with Congress in January, 1901.

(Mr. Campbell shows the witness letter dated 11th of January,  
1901, in relation to this matter, which went from the Secretary of  
the Interior to Congress. Did not pass through witness's hands.)

Can't say whether that letter ever came into my division. I don't  
even remember that letter. Don't remember this pamphlet, entitled  
"59th Congress, 1st Session, etc., San Francisco Mountain Reserve."  
Don't know that I ever saw it before.

I expected to go out of the General Land Office and get this agency

577 from Benson to sell the land. At the conversation at the hotel, I think I asked Benson something about compensation if he secured those base lands or any portion of them. I asked if he would give me a chance to sell the scrip, if he got it. I think he said he would give me the agency if he secured any. I never sold any scrip in my life—any lieu land scrip. Once or twice in 1884 or 1887, somewhere along there, I sold soldier's additional homestead, and nothing since then. Don't know that I have ever testified to the fact that I asked Benson for an agency anywhere.

The first time I ever knew Benson had an agent here was when I asked for the agency at the interview at the hotel in 1902. Then he told me this gentleman was here in Britton & Gray's office. He didn't tell what his agent was doing here. He didn't tell me that his agent had a contract to purchase a large body of Aztec scrip for him.

I knew Britton & Gray. Very prominent, both socially and legally.

I don't remember having written a letter to Benson in October 1903 asking him to loan me some money, stating that my family was large and that I had been de-rated in the Land Office and was in debt, and that one of the rules of the Department was that if a man didn't pay his debts he would lose his job. I never wrote such a letter. Can't recall that I ever wrote to Benson asking him to loan me money. I may have asked him for money, but never asked him for a loan. I never asked for a loan from Benson in my life.

578 When I wrote him that Steece and Pugh were making the investigation, I told him I thought that was worth five or six hundred dollars.

Benson had not employed me specially to do that work. He had asked me to keep him informed as to anything that was of interest to him. And I was trying to get a report for him which he wanted to get from Mr. Steece. I had informed him that Mr. Steece and Mr. Pugh were making an investigation and that I was trying to get the report for him. I informed him, I think, in March or April, 1903.

I went out of the Special Service Division on the 1st of April, 1903, and I will not swear that it was not the 10th of April, 1903, that I wrote that letter about the five hundred dollars. It was after Steece had come to Washington, about the middle of March, as I remember. Can't fix the time Steece was here, whether it was in April at all or not. In the letter in which I wrote Benson about Steece, I did not say anything about being derated and needing the money very badly; but I had been derated on the 10th of April. I was reduced two hundred dollars a year salary. I had six people depending upon me for support, but I didn't say that in my letter to Benson. I don't remember when I wrote for the \$500. I told him in one letter about that time that the work I had done was worth about \$500—five or six hundred dollars.

Further cross-examination.

By Mr. CAMPBELL:

579 During recess I have looked at a statement that I made to Burns on the 19th of December, 1903. I have refreshed my memory from that. I wrote to Benson some time in March, 1903, I think it was, that Mr. Steece was in town, and that I was trying to get a copy of his report. And I think I said that if I got a copy I would send it to him. Don't remember whether that letter was written on the 10th of April, 1903, or not. I am not positive, but my impression is that I wrote it in March, but I wrote directly after seeing Mr. Steece.

Don't know what Benson gave me the two hundred dollars for on the 18th of December, 1903, except that he promised it to me the day before. Benson had asked me to do something; I was endeavoring to do it, and I was there making a report on what I had tried to do.

"Q. Were you not there, sir, under the instigation of William J. Burns? A. I went there for that purpose.

"Q. Telling him that which was not true? A. Yes, sir.

"Q. And telling him something about the stenographer's notes? A. Yes; but he had promised me the day before that he would give me some pictures.

"Q. Did you not tell him you were very hard up? A. I expect I did. I am generally hard up."

Don't know how many times I have told Benson I was hard up. May have told him a half dozen times. I had no hesitancy in  
580 telling Benson I had a large family dependent upon me for support.

When I told Benson I could get him the stenographer's notes for a thousand dollars, but that I thought five hundred would be enough, Benson said the matter related to others, and he did not see why he should pay money for that information. He didn't care to see the stenographer. Don't remember whether in New York I testified that I went to Benson and offered him the stenographer's notes, and he said everything referred to Mr. Hyde and he didn't see why he should pay any money for things that only referred to Hyde.

The witness here admitted that in the testimony given by him in the City of New York on the twelfth day of January 1904, he testified that he went to see Benson on the 17th of December, 1903, to help the Government make a case, under the instructions of Burns; that he took the money to help the Government make a case; that he did not have it in his power and had no intention of furnishing the stenographer's reports, and that he could not have gotten the stenographer's reports if he wanted to unless he stole it, and that Benson told him that he did not want the stenographer's reports, and that he declined his proposition to furnish the stenographer's notes.

In December, 1903, I had no reports of any secret service agents. In the ordinary course of my business at that time such reports

would not pass under my observation or into my control. I was in an entirely different department. I expected to get them in March, 1903, from Steece, but when I saw Benson in December, 581 1903, acting under Burns' instructions, I did not except to get them and did not intend to furnish them.

The witness here admitted that on his examination in New York, referring to that testimony, he testified as follows:

"Q. Didn't you go there (speaking of the hotel) for the purpose of endeavoring to get him to offer you some money for these stenographer's notes? A. Yes, sir; that was the object."

Notwithstanding my conscience has pricked me, I have never paid back any of the money; I rendered more than the equivalent—ten times.

#### Cross-examination.

#### By Mr. WORTHINGTON:

I did not do anything about representing Benson in this lieu land selection matter, except to communicate with Valk and have Valk go to him. I had no personal handling of the cases at all. Don't know what cases Benson had an interest in. Had no means of knowing that he did not tell me in the interview in Captain Thomas' office of any of the cases he was interested in, and he never sent me any card afterwards showing me the cases he was interested in, and I never knew; and I could not have done him any good except through 582 conversing with Valk in cases where some technical matter might have stopped them from immediate action, or something of that kind. I don't recall that anything of that kind happened. Whatever was done to assist Benson in that regard was done by Valk alone.

Nearly a year after I was transferred from Division P, I told the Secretary of the Interior about my connection with the matter, for the first time. I told Burns I would like to see the Secretary of the Interior, and he arranged an interview, and Burns and I went over and saw him. I had several interviews with Burns before that. Burns had been trying to find out whether I had received any money from Benson, and he could not. I had denied it. In the interview with the Secretary, Burns was there, and Judge Pugh and Assistant Secretary Ryan and the stenographer, who took down all I said. I told because I was getting to a point where I could not get around it any further, and I had intimations that other parties had confessed their arrangements before and involved me. Burns told me this. I knew what I was confessing to was contrary to the rules of the office. I didn't regard it as a crime. Don't know that anybody told me it was not a crime before I made my statement. I did not ask any immunity. I asked the Secretary what my status was, what he was going to do with me, and he refused to give me any information. Nobody told me I would not be prosecuted. As a matter of fact, I never have been.

I went to New York and testified in two cases and testified in San Francisco and testified here about two years ago. Up to the time



that I testified here in another case about a year ago, I was  
583 still in the Government employ. Shortly after this later testimony in another case about a year ago, I was out of the Government service. Up to that time, I was kept in the Department as a fourth-class clerk at a salary of \$1800, for four years after I had informed the Secretary and Burns about these transactions with Benson.

Never met Hyde until I went to San Francisco in these trials. Never saw Hyde until after the indictment of Benson. Never had any correspondence or communication with him. Never saw Schneider until after this trial began. Never had any correspondence with him of any kind.

Did not know Dimond until I went to San Francisco or New York; don't know which. It was the first time I met him. That was after these prosecutions began.

I made the outlines of the map I sent Benson of northern California. I did it on my desk. I got the office map from Miss Peyton. The map I traced from is on file in the General Land Office. I got some data from reports. I don't think they were on the map.

During recess, I looked at the statement I made on the 19th of December to refresh my memory. I was furnished a copy of this statement, and have had it for a year, maybe two years. I think I got it in California. I have carried that around to keep my memory refreshed.

I swore to the statement I made to Burns at Room 136 in the General Land Office. A stenographer was there and took it down and made a copy. I have not made any statement except my  
584 testimony, in public, since I made the statements which were taken down, on behalf of the Government.

My memory has not been refreshed since yesterday as to when and where I first saw the Holsinger report. My personal recollection is that I saw it on my desk, where it apparently came down in the ordinary course of transmission from the Registry office. Since I testified yesterday, I examined the record in the General Land Office, and am more convinced than ever that that is correct. The record that was made in the registry branch of the office. It says that the Holsinger report was received in the Land Office on the 18th or 19th of November, and that it was written on the 12th. That helps me to say I saw it on my desk, because it would in fact come to my desk the next morning or the evening of the 18th of November, and it had its regular place in the record. There was no break in the record at all. It took its regular place there, with all the marks to indicate that it came direct to my desk. There was frequently mail that came down late in the afternoon. I generally left the office at closing hours, whether it was 4 or 4:30. I have left the office sometimes before closing time, leaving the clerks there.

Have not talked with McGee since yesterday. Don't know how long the Holsinger report remained in my division. Never saw it after I read it, as it came down I think in the usual course. I sent it with the rest of the mail to be registered. Certainly it came

to my desk before it went to the registry clerk. All the mail goes to the chief of the division first, and then he takes it up to the  
585 Registry Division for distributing and registering, and the ear-marks on the record show it was delivered to Mr. McGee. My recollection is that it went to me first and then to McGee. That is the order of the office. The name of every clerk is put on the docket to whom the letter is referred.

In one of my last interviews with Benson, I told him, under the guidance of Burns, that the investigation was mainly directed toward Hyde and Hermann. I think Burns told me to say that. I did not understand that to be the truth when I told it to Benson. At that time, I had made a confession myself, and I understood perfectly well that the investigation was being directed against Benson as well as other people.

#### Redirect examination.

By Mr. BAKER:

I testified twice in New York, in January and February, 1904, I think; and I also testified in San Francisco sometime between the middle of March and the 10th of May, 1904. I was cross-examined in New York by Mr. Campbell, but not in San Francisco. One of the letters I wrote to Benson at the dictation of Burns was produced by Benson's counsel in New York, I think, and perhaps both; but no other letters were produced there that I remember of. I don't remember any paper purporting to be a letter written by me to Benson asking for a loan of money to have been produced in New York, and I don't think there was.

I first testified publicly in regard to the disclosures I made to the Government officers with respect to this case in New York  
586 in January or February, 1904. I had told Mr. Burns about it in the early part of November, 1903, and also the Secretary of the Interior. As far as I know, the only persons who knew of my relations with Mr. Benson prior to my testimony in New York were the Secretary, Mr. Burns; Assistant Secretary Ryan, Mr. Pugh and the stenographer.

#### Re-cross examination (continued).

By Mr. WORTHINGTON:

I never sent Benson any acknowledgment or receipt of any kind for the moneys he paid, except that those yellow papers that enclosed the money I would sometime mark, probably with a cross or something of the kind, and send them back.

*William E. Valk.*

#### Direct examination.

By Mr. BAKER:

At present doing nothing. In 1891 began service in the Land Office as \$1200 clerk. Promoted until I became principal ex-

aminer, at \$2000, in March, 1902. Served until April 30, 1907. Shortly after the Act of June 4, 1897, I was appointed to take charge of the Forest Reserve lieu selection work. Continued in charge until April 1, 1903. Prior to taking charge of the lieu selection work, I was clerk in the Special Service Division.  
587 The lieu selection work was not in hand then. After the Act of 1897, when the selections came into the office at first, the then chief of the division put me in charge of the work. Mr. Harlan was the chief of division. It was called Division P.

After the selections, under the act of 1897, began to come in, I was put in charge of the work, and had dockets prepared and other papers necessary to keep a record of the work. I would examine and pass upon the selections as they came in from all of the public land states and a record made of them. They were supposed to be taken in the regular order and examined. The work became heavy and we had to have assistance. Could not give the names of the assistants now. There were many of them.

I was in Division P, after the passage of the Act of 1897, until Division R was formed. Then I was transferred to that division, with the clerks under me.

When the papers came into the office, the applications were accompanied by the non-mineral affidavits and other papers required under the regulations, and they were generally turned over to be recorded in the Recorder's division first. Then in due course it would come to Division R, and it would come to me. I would sort the mail and give it to the docket clerk. He would docket it as an application, to take its number as it came in, according to the date of its receipt. Then it would be jacketed and put into the files, to be taken up when reached in its regular order. It was examined to see if it was in keeping with the regulations of the office.  
588 and that the tract was subject to selection, and that the base offered in exchange was a proper base. If no non-mineral affidavit accompanied the application, we would call for them. There was a time when non-mineral affidavits were not required. Then afterwards the regulations required it. I don't remember the date. If the clerk took up the application and found it perfect and in keeping with the regulations, he wrote a letter of approval, and I would only see the letter. Some of the time they were instructed to take the cases up in regular order, but latterly I had them take up the cases to suit myself.

When Division R was formed, I was transferred and had the same duties as I had in Division P. I continued in that position until September, 1902, when I was transferred to the Contest Division. This was September 15, 1902, after which I had nothing to do with forest lieu selections. The Contest Division is known as Division H.

In the fall of 1897, I think, I first met Benson. Mr. Harlan sent for me. He told me Benson sent to see me at Captain Thomas' office. I think in the afternoon I went over to see Benson. I saw Captain Thomas first, and he told me Benson was in the adjoining room. He introduced me to Benson. Benson referred to an interview he had had with Harlan, and spoke of an understanding about

advancing some cases in which he was interested. He did not specify any cases; did not mention the name of any.

Before I went to see Benson, Harlan told me that Benson was to pay ten cents an acre for the approval of certain lieu selections of which he would latterly inform Harlan. Substance of it was 589 that Benson was satisfied that I would do what Harlan wanted me to do. Benson said he would inform me later what cases he was interested in. Later he sent me lists. In October 1902, I destroyed all those lists and the correspondence I had with Benson.

Some of the names appearing on that list were F. A. Hyde, C. Glover, H. M. Morris, another Morris, Rattenburg, and Elizabeth Dimond, and a great many other names. Don't recall them now. C. W. Clarke's name was on the list, L. L. Rattenburg's name also; I got it Rattenberg. He frequently sent me lists. I should think approximately there were two or three hundred cases. Anywhere from 40 to 600 acres in each, or more.

At first I took up the cases myself and examined them, and when I saw they were right on their faces I approved them. Benson wrote me about certain cases, and I would pick those out. They were outside of the regular order according to the Office regulations, but in regular order according to Benson's list.

After I satisfied myself that a certain sum had been earned, I reported that fact to Harlan. Harlan made two returns of ten or twenty dollars. I protested. Said I had approved selections amounting to several hundred acres, and that I should get more. I asked if he was paid any more, and he said that he was not and that one-half of it he gave to me. After my conversation with Harlan, I communicated with Benson by letter. I wrote him that so many 590 hundreds or thousands of acres had been approved, and that I had gotten so much; I was dissatisfied, and that as long as I was doing the work I wanted to reap the benefit of it. Benson wrote he would deal with me direct and eliminate Harlan. After that, Benson paid me for the selections that were approved, and I or my subordinates did the work.

I next saw Benson I think in the fall of 1898, at the Shoreham Hotel. We talked about the progress of the work and other matters. After some little conversation, which I do not remember now, he went out and in a few moments came back and asked me if I did not want to go to the toilet. While we were talking, Benson went over to my coat, and when I got up to leave I found an envelope on my coat with fifty dollars in it.

I saw him within the next ten days. I think he said he was going to New York, and when he came back he gave me a telegraph code, the Commercial or Anglo-American, and said if I wanted to telegraph him at any time to use that code. Gave me his address, 507 Montgomery St., San Francisco, Cal. On several occasions, I used the code. Signed myself with the initial "T". Telegrams and letters I received from him were signed "B". Heard from Benson pretty frequently after that.

Could not tell the names in which most of the cases appeared.

My impression is C. W. Clarke and F. A. Hyde had the most. Very few—five or six, at the most—in the name of Elizabeth Dimond.

I never passed a case that was not right on its face. When I found anything required in his cases on the list, I wrote him for it. After a number of cases would be approved, I would write Benson, 591 giving him the numbers of the selections and the acreage. I would receive a reply from Benson directed to me at *any* home in Laurel, Md. The money would be sent to me in currency, from a ten dollar bill to a one-hundred dollar bill—10's, 20's & 50's, and a hundred, and wrapped in colored paper; no writing inside; just an envelope addressed to me. Benson paid me about two thousand dollars; perhaps two hundred dollars more than that.

First met Dimond in the summer of 1901, in the chief's room of Division R. I was not at work in the division at that time. I was introduced to Dimond by Mr. Britton, of Britton & Gray, or the chief of the division; I am not certain. Dimond said he was there to assist in the prosecution of certain selections in which Hyde was interested. He did not mention Benson's name. He did not give me any papers on that occasion.

In November, 1901, the Commissioner issued a verbal order that we could go through the files and pick out all cases that we found on their face to be in a condition to be approved and to approve them. I read the order to the clerks and told them to go through the files themselves. I didn't do the work myself. They did.

Prior to that time, I had instructed Mr. Holden, the docket clerk, to give out the work to the different clerks, and when he would give it out I would give them some of the cases I was interested in at the time in the same batch, because I wanted to expedite them. I thought it was policy not to give the whole list at one time. I mean safety with regard to myself, to allay suspicion.

592 I next saw Benson in the fall of 1899 or 1900.

I remember a claim of Isaac Liebes. My impression is Mr. Benson said something about filing what he termed segregated applications in that claim.

May have had, but don't recall any conversation with Benson in regard to forest reserves. I recall Benson asked me something about forest reserves, and I told him that was outside of my jurisdiction.

The witness was then shown three slips of paper which he testified he received through the mail from the defendant Benson; but said he could not fix the time when he received them. Said slips were read in evidence by counsel for the Government, and are as follows:

## "EXHIBIT No. 96.

355

No.	Base vacant	96
Applicant	C. W. Clarke	for identification
District	Van Couver	
State	Washi'n	
Date Filed		
Date forwarded		

## Description:

E.  $\frac{1}{2}$ ; N. W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of  
Sec. 33, T. 9 S. R. 27 E., M. D. M.

Dist.	Independence
State	Cal.
Approved."	

593

## "EXHIBIT No. 97.

403

No.	Base vacant	
Applicant	F. A. Hyde	
District	Carson	
State	Nevada	97
Date filed		for identification
Date forwarded		

## Description:

40 acres of unsurveyed land in N. E.  $\frac{1}{4}$  of  
Sec. 2, T. 37 N., R. 38 E., M. D. M.

## Lieu:

S. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 36, T. 14  
S., R. 32 E., M. D. M.

Dist.	Visalia,
State	Cal.
Approved."	

## "EXHIBIT No. 98.

343

No.	Base vacant	8/11
Applicant	Henry S. Morris,	
District	Lakeview	
State	Oregon	98
Date filed	Feb. 6, 1900.	for identification.
Date forwarded,	6, 1900.	

## 594 Description:

N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  and S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 3; N. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 2, T. 31 S., R. 33 E., W. M.

## Lieu:

N. E.  $\frac{1}{4}$  of Sec. 36, T. 27 S., R. 32 E., M. D. M.

Dist.

Visalia

State

Cal.

Approved."

A few days after my first meeting with Dimond in the fall of 1901 I met him again. I think it was on F Street, at the eastern entrance of the General Land Office. I was returning from lunch, and Dimond was standing there. After greeting each other and exchanging a few words, he showed me something. My first statement was that he gave me a letter from Benson. I retract that. I confounded that with something else; but he showed me a card, Mr. Benson's card, or something he pulled from his inside pocket, and it indicated to me that he knew Mr. Benson. He didn't hand me the card; just sort of pulled it out of his pocket and I glanced at it, and saw that Benson's name was on it. He then returned the card to his pocket. After that he gave me a memorandum of about eight or a dozen cases in ink on a slip of paper. No names on it. Just the numbers. Some of the cases that have been on file for some time. Some of them were Elizabeth Dimond cases.

595 and some other cases that had not been approved then.

I took lunch with Dimond on the first interview, at Seventh and G Streets. He never discussed matters in reference to the General Land Office except in the most modest way—that he was going to do so and so. He always put it in the future.

I was never at his office that I can recall. Appearances are all that I can recall that he filed.

I don't recall any letters that passed through my hands from Dimond.

Witness was here shown exhibit 354—a copy of the Anglo-American Telegraph Code, and he identified the same as the telegraphic code given to him by Benson on the occasion referred to in his testimony; also as the book turned over by witness to Special Agent W. J. Burns, November 11, 1903—the book bearing the initials of witness and of said Burns as of that date.

Witness is shown case 2904, C. W. Clarke. I examined it and made calls for the necessary proof to complete it. I say it was taken out of its regular order. The jacket says that it was approved November 30, 1901. Can't tell when the original application was received, but it was long prior to that. There were a great many amendatory applications filed. Can't tell when the original was filed.

On the 16th of December, 1903, I saw Benson. Mr. A. A. Thomas came to my room in the General Land Office and told me Ben on

wanted to see me at Room 213 in the New Willard Hotel.  
596 I went and told Mr. Burns about it, and told him I didn't want to see Benson, but he said see him, by all means. I said, "suppose he offers me money." He said, "Why, take it." I said I did not care to do that dirty business, but I did as Mr. Burns said, and went and saw Benson at his room. After a few minutes, he asked me if I did not want to go to the toilet room, and I assented and went in and saw some money lying on the marble wash-stand.

The conversation I had with Benson was about the investigation. I intimated to him that I thought Hyde seemed to be the man that the Government was after, and not him, Benson, especially.

The money was one hundred dollars that I picked up on the wash-stand, four 20's and two 10's.

Witness was shown some money and asked to examine it and state whether or not he had seen it before.

"Mr. CAMPBELL: Mr. District Attorney, I admit that that is the money, and I admit that Mr. Benson gave it to him.

"The COURT: In view of the concession I do not think it is necessary to take any more time with it, unless the other defendants wish to make some question about it."

I never took any other lieu selections out of the order except for Mr. Benson. After examining case 2904, I found it had been taken up about a week prior to its regular order, and upon examination  
597 there was found to be a conflict with the railroad. The claim was not passed without notice to the railroad. The railroad was notified and its claim cancelled, and after this case was passed I received money from Benson.

Witness was here shown selection 3030 and stated that the same had been taken up out of its regular order, about a week or so before it would have been reached in regular order. It was marked special by me a week ahead of time. Have never received any money on account of this selection case; the same has never been approved.

Other selection records were shown to witness, involving lands described in the indictment, and as to some of them he testified that the selections had been taken up out of their regular order.

I can't remember that Dimond ever spoke to me about Hyde or Benson. He spoke about coming to the city to prosecute some cases, and he afterward filed his appearances, and some of these cases were in Hyde's name. He gave me a little slip of paper, with the numbers of nine or ten cases. These I have been examining are some of the cases.

I received about a hundred of the slips from Benson like exhibits 93 and 97 and 98.

Witness was here shown exhibit 353—referred to also as exhibit 490—and he testified that he had seen the same in the General Land Office; that it was transmitted to the Commissioner of the General Land Office by the late Senator Mitchell of Oregon through the mail and that it came to him desk; that he, at the same time



598 examined the data referred to in the exhibit and found that it related to some of the Benson selections. Witness was also shown exhibit 355 being a letter from Commissioner Hermann to the late Senator Mitchell of Oregon, dated October 10, 1901, and he testified that he wrote the letter for the Commissioner's signature and that the same was signed by Commissioner Hermann; that the statement therein "I also return to you the memorandum filed by you with your said letter with regard to said selections," refers to the exhibit 353 or 490; and that the same was returned to Senator Mitchell as stated in said letter.

Witness was also shown exhibits 356, 357, 358 & 359, and testified as to the same that they embraced in part certain correspondence relating to forest lien selections pending in the General Land Office in which Benson was interested.

During the direct examination of this witness the following occurred:

"By Mr. BAKER:

"Q. Did you have at that time (at the time of his meeting with Benson in Washington when he had a talk with Benson in reference to the Isaac Liebes claim) any conversation with Mr. Benson with regard to forest reserves, or at any time? A. I may have had, but I do not recall any.

"Q. Now, let me see if I can refresh your memory. Do you recall going over your testimony, a memorandum of your testimony, with me? A. A day or two ago?

"Q. Yes. A. I do.

599 "Q. Do you remember—

Mr. WORTHINGTON: I object, your Honor, to any question being asked by the Government as to what this witness has said to Mr. Baker out of court unless it is put upon the ground that the Government is taken by surprise, and asks it for the purpose of discrediting the witness.

"The COURT: I do not understand you are asking it for that purpose.

"Mr. BAKER: No, no; just for the purpose of refreshing his memory if I can.

"The COURT: Let me see what the question is.

By Mr. BAKER:

"Q. I will ask you whether or not you stated to me that Mr. Benson had said something to you about forest reserves, and that you had told him that that was outside of your jurisdiction? A. I recall that; yes, sir.

"Mr. WORTHINGTON: I object to that.

"The COURT: I think I will permit that.

"Mr. WORTHINGTON: I would like an exception to it, your Honor. Let me state the grounds on which I put it. I put it on the ground that, as I recollect that provision of the Code which authorizes such a person to be asked—

"The COURT: I do not allow it under that at all. I do not find that he is hostile. I allow it as a matter of discretion, to refresh his recollection."

To this ruling of the Court, counsel for the defendants and each of them duly excepted.

600 "By Mr. BAKER:

"Q. Now will you answer that, Mr. Valk? A. I will answer that by saying that we had had conversations with reference to forest reserves.

"Q. Will you tell us what those conversations were, the best you remember of them? A. Mr. Benson would ask me about the creation of forest reserves, and I could give him no information about them; I knew nothing about the creation of forest reserves. I never attempted to keep myself posted, and did not care anything about them."

To this question counsel for the defendants and each of them objected, on the ground that it was permissible to allow the counsel for the Government to ask the question only when, in the discretion of the Court, it appeared that the Government had been taken by surprise by the testimony of the witness. But the Court overruled the objection, saying that the question was not allowed under Section 1073-A of the Code of the District of Columbia; that the Court did not find that the witness was hostile, but allowed the question as a matter of discretion to refresh the witness's recollection.

To which ruling of the Court counsel for the defendants and each of them duly excepted.

Cross-examination.

By Mr. CAMPBELL:

I did very little of the work myself in expediting Benson's cases; but I would get out the cases in which Benson was interested.  
601 Don't know of a single case which was approved that was not all right on the face of the record. When a case came to the Department, there would be a deed and deed of relinquishment and a non-mineral and a non-occupation affidavit. What I did for Benson was to see that the record in these cases was clear, and where I did not do the work but gave it to the other clerks they were supposed to do the same thing. Never passed up any cases to the Commissioner in which the record was not apparently complete.

Nothing but an abstract of title to show how the land was obtained from the various states. The abstract would show a patent or a deed from the State, and if there were any conveyances it would show the mesne conveyances; and it also would have the certificate of the county clerk in which the land was located that there were no judgments against the grantees and no taxes due, and the deed of relinquishment and the affidavit that the land was not mineral and not occupied.

The clerks were not instructed by me to do anything except that if the cases were right according to the rules and regulations of the office to pass them, and that was the rule of the office, that if the

record was perfect upon its face it would go to the Commissioner for patent and approval.

Only one of the cases I examined this morning was approved. The others were turned down. When I examined the record and found a defect in the title, I would not write Benson. The clerk would call for the evidence necessary to complete the case. 602 I gave them no instructions in reference to that. Nothing crooked about it, except I expedited them. Never passed a title that was not perfect. The only thing was taking them up out of order.

When I first went into that division, there was no general order that I should approve the cases from 1 up. Just did it myself. Afterwards, there was an order issued by the Commissioner that all cases should be examined, and those in which the record appeared to be complete should be passed up for patent. That was some years afterwards. I think in 1901. Before that, if there were a whole lot of cases that were ahead of a good case or a perfect case, the perfect case had to wait until those others were disposed of, unless that perfect case was expedited. Sometimes the Commissioner would expedite or make special some case for a Congressman or Senator. Could not say how often it occurred. Quite frequently.

All I know about the lists of cases Benson sent me was that he was interested in them individually.

At a certain point, I knew that Benson and Hyde were at loggerheads. I think in the interview with Benson at the Shoreham Hotel he intimated to me that he did not care a continental about Hyde's business. He was in competition with Hyde. That was in the Fall of 1898, I think.

I never had a conversation with Benson as to how he became interested in the F. A. Hyde, F. A. Hyde & Co., C. W. Clarke or Elizabeth Dimond cases. I never knew. Dimond had called for them and had been examining the list that he, Dimond, gave me.

603 When he gave me the list, he told me that they were cases he would like specially looked into. Don't know; am not certain whether any of these cases were on Benson's list.

In the summer of 1903, I wrote Benson asking him to loan me five hundred dollars. He said he was coming on to Washington. Afterwards he came, and then he gave me that fifty dollars. I thought there was some money due me for cases that had been approved; but I hadn't written him about that money, but did ask him to lend me money. I don't know why he gave me the fifty dollars.

Cross-examination.

By Mr. VANDER VEER:

I think I first met Dimond in the summer of 1901, in July or August; might have been September. First met him in the room of the chief of my division. He was with Sandy Britton, of Britton & Gray, of which Mr. Brown was also a member. They were practicing lawyers here. Had been for a good number of years. A firm of high reputation. They had much business in the land office. I

knew both Mr. Brown and Mr. Britton. It was through the instrumentality of Mr. Britton that I met Mr. Dimond. I think it was stated that Dimond was there in the interest of Mr. Hyde's matter, or something like that. He may have mentioned that he was there in the interest of Hyde and others. He may have mentioned that he was representing the Tonawanda Company. I don't recall. The interview lasted a few moments. It was only casual.

604 Met him a few days afterwards just as I was going out.

He asked me if I would join him at lunch, and we went over to Seventh and G Streets for lunch. Just had a general conversation at luncheon. Nothing specific said about business in the land office. Did not mention any claimants for whom he appeared. Just said he was going to be in the city to represent the interests of Hyde and others. Saw him two or three times afterwards, passing to and fro in the corridors of the Land Office. He was there on business.

Ordinarily, if a lawyer would come in to prosecute business, he would go to the chief of the division, and ask to see the clerk, and he would then go over to the clerk and tell what he wanted, and invariably he would then give a memorandum to the clerk. That is what I call the list. Nothing unusual in Dimond giving me that list. Other lawyers did it.

During the few times I saw Dimond, he never mentioned Benson's name.

Can't recall whether the first case Dimond asked for was Miller and Luchs of San Francisco. Now that you mention it, I do remember of his talking to me about it.

I recollect of his calling for the record in the North Tonawanda Lumber Company. Mr. Hyde had nothing to do with that that I knew of, nor with the Miller and Lux claim.

605 Dimond never asked me to expedite a case. He never asked me to do anything in relation to any of these cases other than what was the ordinary, usual practice of reputable attorneys in the Land Office wishing to get information.

When Dimond came, he would first go to the chief's room, and if he wanted to examine any cases he examined them in the chief's room, not in my room. Don't think I saw him at the Land Office more than a dozen times, all told. I never did any business at all with Dimond at the Land Office. Dimond applied to me for information respecting cases at times and gave me his list in two or three instances.

Can't recall the exact date when I first told anybody connected with the Government about my dealings with Benson, but it was during the Government's investigation. Up to that time I had not been interviewed by Burns. I was prompted to do this by my mother and wife. Macey went with me to Burns in December, 1903. Then I made a statement and swore to it.

The Elizabeth Dimond case was acted on by Mr. McVean. I just gave it out to him among others, in accordance with the custom of distributing the cases in the office. I never interfered with the duties of the clerks in any of these cases in which Benson was supposed to be interested. The only thing I did was to give them out to

them. I would take my share of the work and give the others to the other clerks.

I could not give you the extent, if at all, that these cases were expedited. Mr. Hermann issued an order in the fall of 1901 to go through the files. There were lots of complaints about non-approval or non-action on cases, and the order was to go through the files and pass for approval all that were found to be all right. This order remained in force until all the cases had been gone through with, and there was nothing else to work on.

The only way to tell what cases were expedited, if at all, would be to look at the docket and ascertain when a case was received, and see if there was any undue haste in one case that was of a lower number over another case of a higher number. I have never gone through the cases to ascertain that. Under the rules, a case should not be taken up until after the expiration of thirty days from its receipt. The case I testified about before was taken up about six days or a week before the thirty days expired. I was not speaking of the cases being taken up a week before it should be in the natural order, as relating to other cases, but only that it was taken up a week before the 30 days expired.

This order that cases should remain on file for thirty days has been in vogue in the Land Office ever since I can remember. It is an old order. Not passed with reference to lieu selection cases. The order applied to any and all cases. It was made some years ago, to the effect that a case has to rest on file for thirty days, in order, I suppose, for those who may have found conflicts to assert their claim. I can't say whether this order was lived up to or not. Could not say whether any different procedure was taken with reference to Benson's claim from others.

The cases I have testified to before, No. 2904, grew out of cases that were due to be taken up long ago. There was no expedition of that case. That case was not approved.

Lieu selection 3030, I know, I expedited myself. It involved a large area, and I was especially interested in it because it did involve a large area. I took it up for the purpose of expediting it, and I found there were mineral conflicts, as the record will show; and the selection has not been approved. The word "special" in red ink endorsed on the jacket is in my handwriting. My recollection is that I wrote the word "special" on the selection because I wanted it to go through. Have no distinct recollection except my own reason.

In case 2904, it says: "Approved by Commissioner, November 30, 1901." There was no expedition in this case. The application filed was in conflict with the railroad, and it took its due course and was approved when it was ripe for it.

A great many of the cases of which Benson gave me a list were not approved. Cannot approximate the number. Not approved because they were not in a condition to be approved on the face of them.

After the Act of 1897, the cases came in rapidly to the office, and it was decidedly running behind, cases piling up, and there were a

great many complaints. The Commissioner then issued his order to take up all cases that were complete and perfect.

After I told the Government all my transactions with Benson, I remained in the office for four years, until April 30th last. That was after I testified in two or three instances in New York and San

Francisco, and in another case here a little over a year ago.  
608 After September, 1902, I was employed at a salary of \$2,000, the same salary I got before. My last employment of the Contest Division passing upon the conflicting rights of citizens of the United States to land which they claimed to have been obtained from the Government. If an applicant filed a power of attorney, he was authorized to act; so that a man might be interested in one of these lieu selection cases whose name did not appear in the case at all.

Frequently in the list of cases Benson gave me reputable attorneys appeared to prosecute them—Britton & Gray, Holcomb & Keegin, and Thayer & Rankin. Their names would appear on the jackets.

Never gave Benson any formal receipt for any money he paid me. Never let Benson know when I received money. My silence, I suppose, was understood.

In December, 1903, when I saw Benson, I told him that the Government was after Hyde.

I told him that because I knew it was a fact. I judged so from the way they examined me. I had no arrangement with Mr. Burns as to what I was to say to Benson. The interview came about in this way:

Captain Thomas came to my room, and called me out in the hall, and told me Mr. Benson wanted to see me at the New Willard Hotel. I had made my confession then, and I did not want to go to see Mr. Benson, and I went and told Mr. Burns. He wanted me to go,

and I said: "Well, suppose he offers me money; shall I accept it?" "He said, "By all means." I said, "Well, I thought  
609 it was a dirty mean trick to do anything of that kind; that I did not want to be used in that way; that I did not like it at all"; and he said, "Well, it is to your interest to go." Mr. Burns did not instruct me to say anything; he did not advise me at all.

On one or two occasions Mr. Burns threatened me, as I understood it, with prosecution. I cannot recall what he said; but it was something about being liable to be prosecuted. That was his whole manner. He was trying to give me the impression that I might be prosecuted; in fact he did charge me with perjury when I made an affidavit that I knew nothing about the thing, which was before I made a confession. No inducements were held out to me to get me to conform to his wishes. It was my impression, though they did not say so, that I would not be prosecuted; and I am thankful to say that I have not been; and I am now aware of the fact that the Statute of Limitations has barred any prosecution against me.

Redirect examination.

By Mr. BAKER:

Q. Mr. Valk, after you had the conversation at the Shoreham Hotel in which you state Mr. Benson said that he and Hyde were at loggerheads, did or did you not receive any memorandum from Mr. Benson similar to Exhibits 86, 97 and 98? A. (After examining papers.) Oh, I received lots of those things.

610 Q. After that conversation? A. Yes.

Q. I will ask you whether or not, after that conversation, you received lists from Mr. Benson of cases to be expedited in which Mr. Hyde or Mr. Clarke or Elizabeth Dimond appeared of record? A. I am certain as to Clarke and Hyde; but as to Elizabeth Dimond, I think those are the early cases. I knew all about those beforehand.

The appearances which Mr. Dimond filed in cases would be in form of letters sent to the office. They would be filed with the case and then noted on the jacket "Henry P. Dimond, Attorney, city." Can't say whether there was a letterhead on Dimond's paper, but I knew his address,—the Glover Building, on F Street.

Witness is shown exhibit 330, appearance of Dimond. Says it is his impression from the stamp that it was received in the Land office.

Henry P. Dimond's address while in Washington City on business connected with the forest lien selections involved in this case was here admitted to be Glover Building, 1419 F Street, N. W.

Recross-examination.

By Mr. VANDER VEER:

It was customary for attorneys appearing for locators in the Land Office to file notice of appearance in behalf of the locators. Some had printed forms of appearance, some docket forms to suit  
611 themselves; some were typewritten and some printed. The only purpose of an attorney filing such a notice of appearance was to get notice of action, so that any action subsequently taken by the Land Office would be sent to that attorney. And that was usual.

By Mr. CAMPBELL:

When I would get the lists or slips from Benson he did not tell me anything about having purchased the lands. He gave me those slips in furtherance of a statement, a talk that we had had, that those were the cases he was interested in. They were cases in which he desired approval. He did not state how he was interested in them.

*Walter K. Slack.*

Recalled for cross-examination.

By Mr. WORTHINGTON:

I know where the selected land which is mentioned in selection case 4085 is, being section 28, Township 9 South, Range 4 East,

San Francisco Land District; it is in the immediate vicinity of Mr. Hyde's ranch—in the immediate vicinity of the house that he formerly had on Coyote creek; I do not know the particular name of the ranch; we call it the Hyde ranch; in the month of April, 1901, Mr. Schneider was the foreman of that ranch for Mr. Hyde, and was located there—that was the main ranch.

The land described in lieu selection case 4084, being section 12, township 10 south, Range 4 east, San Francisco

Land District, adjoined the same ranch and was south and east of it; it was right south of the Gilroy Hot Spring; it was four miles due east and two miles due south of the ranch house where Schneider had his headquarters as foreman—that is, approximately.

The land described in case 4085 was approximately one mile or a mile and a half from the ranch.

Mr. Schneider was not in the office of Mr. Hyde when I went there the first time in 1899; he was then on the ranch. Mr. Hyde had three ranches, but this was the main ranch. I know that Mr. Hyde sold some lands along Coyote creek, and I think these were selected at the same time, as a part of that transaction. I think the sale was made to a man named Dunlap. I was in Mr. Hyde's office at the time. To my knowledge, Mr. Benson did not have anything to do with this sale or transaction.

By Mr. BAKER:

Schneider's family was living at that time, I believe, in East Oakland. I have no absolute knowledge as to what time he spent at this ranch. He was back and forth. Most of the time, he was at the Hyde ranch at Gilroy—the one that this land was near.

*Clarence W. Hodson.*

Direct examination.

By Mr. BAKER:

Manufacturer of blank books, printed and county office supplies. State Senator for Oregon. Same business in 1898.

I was notary public in 1898. Knew Wiley B. Allen. My business was adjoining his. Don't know defendant Schneider.

Witness was here shown application to purchase No. 8603 in the name of James E. Randall, dated August 15, 1898, for the north half of Section 36, township 18 south, range 9 E., containing 320 acres, and was asked to examine same and state whether his handwriting appeared thereon. And he stated that it did not; that the words "C. W. Hodson, Notary Public for Oregon" were not in his handwriting; that he had no idea whose the handwriting was; that there was an impression of his official seal on the paper.

Kept my seal on my desk, right in the open office. Had no counter and no railing between where my desk was and where the public came in. My seal on the top of my desk. Been there ever since I was appointed notary. It is there now, so far as I know.

I do not know James E. Randall. Nobody by that name ever



appeared before me as a notary public to acknowledge that kind of a paper, or for any purpose. Never appeared before me for any purpose. I never took an acknowledgment on a public document of any nature, at any time. Never took affidavits on a public document of that character. Acknowledged a will once, a couple of mortgages, and two or three deeds, and swore some election officers. Never did any other notarial business at any time. I take nothing except acknowledgments of my bookkeepers in verifying claims that  
614 are filed for the sale of county supplies.

Witness was here shown other applications to purchase purporting to bear his signature and official seal, and he testified as to the same as follows:

Application to purchase No. 8604, in the name of Milton York, dated August 15, 1898:

My official seal appears on the application. The writing "August 15, 1898, C. W. Hodson, Notary Public for Oregon," is not in my handwriting. I know Milton York. He lives in Portland and is a candy manufacturer. He never appeared before me to acknowledge this paper nor did he ever appear before me to acknowledge any paper. He never appeared before me in any capacity for any purpose.

Application to purchase No. 8605 in the name of Henry G. Chase, dated August 15, 1898:

An impression of my official seal appears on the paper. The words "15th of August, 1898, C. W. Hodson, Notary Public for Oregon," are not in my handwriting. I do not know anybody by the name of Henry G. Chase. No such person ever appeared before me to make an affidavit.

Application to purchase No. 8626 in the name of Minnie Schmale:

My handwriting does not appear upon the application. The words, "C. W. Hodson, Notary Public for Oregon," are not in my handwriting. The seal on the paper is an impression of my official seal. I am not acquainted with Minnie Schmale, but I know A. W. Schmale, her husband, who lives in Portland. I have a  
615 speaking acquaintance with him. I never saw him to know him until about a year ago when he was here. Neither he nor Minnie Schmale ever appeared before me to make an affidavit or acknowledgment.

Application to purchase No. 8615 in the name of A. W. Schmale:

My handwriting does not appear anywhere on the application. The name "C. W. Hodson" is not in my handwriting. The writing "C. W. Hodson, Notary Public for Oregon" is not mine. The seal on the paper is an impression of my official seal. A. W. Schmale never appeared before me to make an affidavit or acknowledgment on the paper. He never appeared before me in any capacity.

Cross-examination.

By MR. WORTHINGTON:

I have something over a hundred people employed in my place now. Maybe half that number in 1898. My seal was on my desk,

in the business office. The other employees were employed in the same building. About four other people in that room with my seal. Ordinarily some of us would be in that room all the time. Depend upon circumstances. It would be possible for anybody to go and take the seal and take it away. There are times when I was out of the office two or three days at a time. I was traveling a good deal then on the road. Some of my employees would be presumed to be there. Occasionally there might be nobody in the office for a time. It is quite possible that somebody might have gotten my seal and carried it away and purported to be Mr. Hodson, and then brought it back.

616 Question interpolated by Mr. Baker, to which witness replies that in examining these papers, "I do not recognize the handwriting as that of any person I know on any of these papers. I don't recognize any of the handwriting. The imitation of any handwriting is very good."

The name C. W. Hodson, notary public, and the dates, are very good imitations. Nothing else in these papers resembles my handwriting.

My attention was first called to these matters when Mr. Mayendorf brought them into my office a couple of years ago. The first time I had ever seen them. That was about 1903. I had no occasion to investigate the matters then for about eight years after the time they purport to bear date. The only one left in my office when these papers were brought in by Mr. Mayendorf, who was there in 1898, was one of my partners, Mr. Whitmore. In 1898, besides him, there was Miss Irwin, my stenographer. My bookkeeper was an uncle of mine, J. M. Hodson. They are the only ones in my office in 1898. There were a number of others who had the run of the office. There were no restrictions about the place. Mr. Schmale was in the book and stationery business,—so far as I know, of good reputation. Don't know when Mr. Wiley died. Recently—sometime before the earthquake, which was two years ago the 18th of this month. I could not tell whether he died before or after my attention was first brought to these papers.

The imitation of my handwriting on these papers is so good that it would deceive the ordinary observer who knew my handwriting. In application 8303, take the word "August."

617 I don't know that I could point out the difference between that and my handwriting. There are two reasons why I know they are forgeries. First, I never took an acknowledgment to a public paper of any kind, State or National, or any other paper of that character. Secondly, I don't do any public business. Those are the only reasons I can give. The imitation is almost perfect, almost a facsimile of my signature as I then wrote it, and, if taken separate and apart from this paper, I would hesitate about denying it. If the signature was cut out—it is so cleverly done, if taken separately and apart from that paper, I would hesitate about saying it was not mine. Don't know that there was anybody about my place then who was a sufficiently expert penman to imitate my signature. I have no knowledge that my seal was ever taken away from my office.

## Redirect examination :

Wiley B. Allen was not living in Portland when the inspector called to see me. I understand he was living in San Francisco then, about 700 miles away.

## By the COURT :

If I saw the name C. W. Hodson and the dates mentioned here, aside from these papers, it would not attract my attention so that I would not think it was mine. It is so clever I would not think of questioning it. Think I was a notary public about five years at the date of those papers, in 1898. Up to 1898, the only use I made of my seal and commission was verifying claims in the cases of county supplies we sold—my own business. Seldom made use of it  
618 for anybody outside of my own business. Don't imagine there were more than a dozen and a half instances where I used it outside of my business. When application was made to me to do notarial work, I always referred the applicant to some notary who is in the business for profit. Never did any business for the notarial fee. Never received a notarial fee in my life.

I knew Milton York by sight at the date of these papers. If York had come to me on that date to take his acknowledgment, I would have referred him to another person. Didn't know Henry C. Chase, or James E. Randall. The nature of these papers is such that I would say that I did not execute them.

## Recross-examination.

## By Mr. WORTHINGTON :

The character of papers that I take acknowledgments of during the course of my business is invoices of whatever goods are purchased by county officials. The law requires that whenever goods are furnished the state officials the bill shall be sworn to by the shipping clerk or bookkeeper when it is presented, showing that the goods named in the bill were actually shipped, and the price charged was reasonable. I have a great many of them. From twenty to fifty or a hundred a day. They are brought to me in batches. The bookkeeper, as a rule, makes the affidavit.

Two of my partners are also notaries. They have their seals and attend to business when I am away. One of my partners has  
619 a seal on the top of his desk, and the other on his desk, the same as I do.

*William J. Burns.*

## Direct examination.

## By Mr. BAKER :

At present I am making an investigation in San Francisco, California; prior to my California engagement I was Special Agent for the Interior Department; that is, from May, 1903, until September,

1903. I investigated the Hyde-Diamond-Benson case in 1903, 1904 and 1905.

I know the defendant Schneider; I first met him at Tucson, Arizona, in July of 1903; Knox Corbett, postmaster of Tucson, was with me, and on that occasion we met Schneider at the Post Office first. I had with me the Holsinger report and three letters, two purporting to be written by Schneider and one by Colonel Zabriskie.

The witness was shown the Holsinger report, which had already been read to the jury, and stated that it was the paper which he referred to as the Holsinger report. He was also shown a letter dated May 24, 1902, purporting to be signed by Zabriskie; and two letters dated July 30, 1902 and September 24, 1902, purporting to be signed by the defendant Schneider, and stated he had those letters with him also.

"Q. Now, Mr. Burns, I will ask you what, if anything, you did with these papers, so far as Mr. Schneider is concerned. State exactly what took place in your interview with Schneider, starting in the beginning, and if anything was said about the papers, refer to what was done with them."

Counsel for the defendants and each of them objected to the question. Thereupon counsel for the Government stated that their purpose was to prove by this and other witnesses a full confession by the defendant Schneider of his connection with the transactions alleged in the indictment.

They further stated that they expected to prove by this witness that he went over the Holsinger report to Schneider, at the time referred to by the witness, and that Schneider read it himself, and that he admitted the truth of all the statements contained in the report. The evidence was offered as against the defendant Schneider, only.

Thereupon, the counsel for the defendants and each of them, renewed their objections to the question on the stated ground that the admissions and confessions of the defendant Schneider were not admissible in the case even as against himself, because under the evidence as it then stood he was not only not shown to have been a party to the alleged conspiracy within three years before the finding of the indictment, but the evidence affirmatively disclosed that he was not; and on the further ground that there was nothing in the Holsinger report which tended to show or indicate that the defendant Schneider had said or admitted that within the period of three years from the finding of the indictment he had done anything that was not perfectly proper and legal; or that he had anything to do

with any unlawful matter concerned in the indictment in this case, or in the evidence in this case, within the said period of three years; and on the further ground that the evidence already introduced by the Government tended to show, if anything, two separate conspiracies, one a conspiracy between Hyde and Schneider in 1898, and the other a conspiracy between Hyde and Benson subsequently, and that counsel for the Government would have to elect which of these two conspiracies they would prosecute, since they were separate and distinct.

But the Court overruled the objections and held the offered evidence admissible as against the defendant Schneider, only.

Counsel for the defendants again called the attention of the Court to the suggested point that the evidence tended to show two separate conspiracies; and thereupon the Court made the following statement:

"I understood that point perfectly, but I did not think it was necessary to say anything about it at this time. At the close of the evidence that can be dealt with."

To the action of the Court in overruling said objections, and in permitting the witness to answer the question as against the defendant Schneider, counsel for each of the defendants duly excepted.

The discussion of the questions raised by the said objections and the ruling of the Court on the objections occurred without the hearing of the jury.

When the jury returned to the court room they were charged as follows:

622 "The COURT: The jury will understand that this evidence is received as against Mr. Schneider only. This matter, as to what Schneider said, is not evidence against the other defendants, but only against him.

It was then agreed between the court and respective counsel in the case that the same objection, ruling and exception should be taken to apply to any testimony of the witness Burns, or any other witness, as to admissions or confessions made to such witness by the defendant Schneider.

WITNESS (resuming): I asked Schneider if he would make an affidavit covering the points given to Holsinger. I read Holsinger's report and gave it to him and he read it. He stated it was all true, just as Holsinger had set forth in his report, but that he would have to take it under consideration. He didn't like to sign an affidavit. We discussed the matter for an hour. Finally Schneider said he wanted to consult his attorney, Hereford. I told Schneider he did not want to be frank, as Hereford was Hyde's attorney, and naturally would prevent Schneider from making any statement. Said he would like to consult with someone in the Masonic order. The name of Freeman, a banker, was suggested by Corbett. Schneider said he would see Freeman and then see me again. I asked him not to see Hereford; that Hereford would prevent him from making an affidavit or statement to me. We parted. I walked a half block away from the post office and watched Hereford's office.

Saw Schneider coming out the back door. Asked him why  
623 he had not kept his promise. He said he felt he had to see his attorney, who was all right and would act for him, rather than Hyde. He said Hereford would like to talk to me and asked me to go to see him.

I questioned Schneider very closely about the statements made in the Holsinger report, and he stated time and again that they were all true. He said he had written the letters. He said Hyde and Benson were partners, but that it was not known. He said his ob-

ject in writing those letters was to put the Government in possession of this information. He said he was very sore—Hyde had promised him a share in the profits of the school lands and had turned him down; treated him like a dog, and that he was angry and wanted to get even with him. I asked him if it was for the purpose of blackmailing Hyde, and he said no. My recollection is that he stated that no one had been to see him since Judge Pugh and Mr. Steece saw him. Subsequently, he admitted that Walter Slack saw him; that he had taken a Masonic oath to Slack not to make an affidavit. He said Slack's brother had committed suicide, and that Slack threatened to commit suicide if Schneider disclosed what he knew or made an affidavit. Schneider said he would not, under any circumstances, make an affidavit, but said he would go on the stand and testify as to the truth of the statements contained in the Holsinger report. His whole reason for not making an affidavit was because of his promise to Slack.

624 He said he had formerly been chief clerk and subsequently outside man for Hyde. That he attended to the securing of persons to take up school lands. He said he went to Oregon for Hyde. We discussed how they secured the names of persons which were used to make school land selections. He told me that they inserted an advertisement in the papers and subsequently changed the initials.

He said that Elizabeth Dimond was a dummy, that no such person existed, and that he gave her address as his own home in Oakland. He mentioned the name of Jennie P. Blair as another dummy. He said they were dummies, and that no such persons existed.

Said he quit Hyde in December 1901 or January, 1902. I think it was January, 1902. He said the school lands were used to get other lands from the Government. He gave me the name of Barnes and of B. F. Allen. Said Hyde had given a Durham bull to John Prior, special agent to the land office.

When he spoke of profits, he said profits out of school lands, and that he was selecting the dummies. He said he made millionaires out of Hyde and Benson and he was treated very badly.

He said he wrote a number of letters to the Land Office and could not get any satisfaction from them, and that he employed Zabriskie, who had also written a number of letters.

The witness then stated that he showed to Schneider the letter from J. A. Zabriskie, to the Commissioner of the General  
625 Land Office, dated May 24, 1902, and letters from Schneider to the Commissioner, dated respectively July 30, 1902 and September 24, 1902, and that Schneider admitted that the Zabriskie letter was written by Zabriskie by his, Schneider's, authority and directions, and that he, Schneider himself, wrote and sent to the Commissioner the two letters of July 30, 1902 and September 24, 1902.

All three of said letters were then read in evidence to the jury by counsel for the Government, and are as follows:

## "EXHIBIT No. 353.

Office of J. A. Zabriskie, Attorney-at-Law.

TUCSON, ARIZONA, May 24, 1902.

"Hon. Binger Hermann, Commissioner Land Office, Washington, D. C.

"MY DEAR SIR: Your favor of the 17th inst. is received. I do not see how I can present the matter more explicitly. If you can get a copy of the lists on file in Sacramento and Oregon, and send them here to me, my friend can pick out many of the dummies. He cannot remember the names without he can look over the list to refresh his memory. Possibly Holsinger might be able to go up and get these lists for me. My informant has important business here and cannot leave. If you will have Holsinger report to me, I will post him how to take these lists without exciting too much  
626 suspicion. I think that Holsinger is a prudent man and knows when to observe a judicious silence. As you do not feel justified in the expense of a special agent such as I suggested in my last letter, perhaps you had better try Holsinger. We can do nothing to point out the dummies without we can obtain the lists. (See my last letter.) You say, (I quote), "no names are given as to those who are fraudulent entrymen." I told you in my last letter that we could pick out these fraudulent entrymen if you will furnish us with the lists at Sacramento of the entries in the 16th and 36 Sections in each township. These are the school lands. There are hundreds of fraudulent entries, but my informant cannot remember the names of the "dummies." If he can see the list he can do so. I suggested in my last letter how to obtain those lists without exciting suspicion, but you seem to think that it would be too expensive to appoint a special agent for that purpose. Therefore, I say, furnish us those lists and we will point out the "dummies." Pursue whatever course may appear most feasible to you for obtaining these lists, and we will point out the fraudulent names on those lists (dummies). Without this we can do nothing.

My informant says that he cannot give you any further information as to the *official* who was addressed by telegram as *B*. He does not think, however, that *B* was a letter in his name, but merely a counterfeit designation. I do not think that you thoroughly understood my last letter for yours of the 17th is not *clearly* responsive thereto.

Very truly yours,

J. A. ZABRISKIE "

627 (The foregoing letter bears the following endorsements:)

"U. S. General Land Office Received Jun- 18, 1907. 102492. J. A. Zabriskie, Tucson, Ariz. May 24, 1902. Reply to 17th and ask copy lists in Sacramento and Oregon rel. fraudulent or 'Dummy' entries Ack. June 18, 1902. June 18, 1902, Agt. Holsinger, W. J. M., P."

## "EXHIBIT No. 28.

"Brady-Schneider Commission Co.,  
Dealer in Cattle, Ranches, and Real Estate, etc., etc., etc.

TUCSON, ARIZ., *July 30, 1902.*

"Hon. Binger Hermann, Commissioner Gen'l Land Office, Washington, D. C.

SIR: Yours of July 24th at hand, and in reply will state  
628 that I called on Co. Zabriskie and he told me that no special Agent nor any other person connected with the Department of the Interior has called on him.

"He said he had expected the arrival of such Agent, but he had never come, nor had he received any reply to his last letter written you. Therefore the matter has remained statu quo.

"If such an Agent should come here and consult with us, we would be able to give him many details of a startling character, and you will hear the foundation for as big a case as the Department has had for some time. Awaiting your pleasure, I remain,

Respectfully yours,

J. H. SCHNEIDER."

## EXHIBIT No. 29.

Brady-Schneider Commission Co.,  
(Cattle.)

TUCSON, ARIZONA, *September 24th, 1902.*

"Hon. Binger Hermann, Commissioner General Land Office, Washington, D. C.

"SIR: Your card of August 4th at hand. I know you have just returned from a trip to Oregon and California, and may not have reached my letter. Had I known you were in Salem, Oregon, could  
629 have given you some good points, that would not have taken but very little time to look up. If you wish to do anything with the Land Frauds I in my former letters have referred to, wish you would, when your special Agent for this Territory returns, have him call on my Attorney, Col. Zabriskie, we can then place before him the manner in which these lands were acquired, and he can communicate with you.

I remain respectfully yours,

JOOST H. SCHNEIDER."

(In Pencil.)

"Mr. McGee:

Write immediately to Special Agent Holsinger. Have him call on Col. Zabriskie and send copy of this letter.

B. H."



(The Holsinger report was again read to the jury by counsel for the Government at this point—this time as evidence against Schneider.)

The witness says, after listening to the report:

There are a couple of corrections I desire to make. I recollect now that Schneider denied his wife had anything to do with it. He said that part of the report was not true. If I stated that he told me Barnes' name, I was mistaken. I think it was me told him about Barnes. He told me it was "B." and I told him it was "J. J. Barnes."

Witness was here shown Exhibit No. 387—a letter dated January 22, 1903, Dimond to Hyde—and asked if he had ever seen it before.

630 He answered that he had seen it in San Francisco, California, at the preliminary hearing before United States Commissioner Heacock in April, May or June, 1905, and that the letter was there produced by the defendant Henry P. Dimond. I heard the testimony of Mr. Dimond at that hearing. He identified this letter as one he had written to Mr. Hyde. The letter, which was then offered in evidence as against Dimond, and read to the jury, is in the words and figures following:

EXHIBIT No. 387.

Dimond to Hyde.

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.,  
Washington, D. C.

JANUARY 22, 1903.

Replying to your letter of January 15th, not numbered, relative to the suspension order, in which you first say that there is much you would like to have known, but as to which you are in the dark. I beg to say that this is a most difficult mission, requiring inexhaustible patience and diplomacy to work out, and it is impossible to sit down and write you each bit of information I get from day to day before I have been able to verify it or sift the wheat from the chaff. Neither would such information do other than probably lead you astray in your deductions therefrom.

631 I too am yet in the dark on many matters, and I am convinced that the situation is so *very serious* that I have to move with the greatest caution in order to keep the nature of my investigations to myself, obtaining my information as I can get it, and verifying and patching together as I go along.

You say my letter appears to be my personal advise, which is quite true, and you are at perfect liberty to disregard it if you see fit, but the advise was the result of such careful investigation and fully concurred in by Mr. Browne after full consultation, and with a full knowledge of the information at hand. The situation is in my opinion already acute and not understanding that I am here merely in the capacity of a private detective to report facts for future con-

sideration and possible action by you, but as your counsel as well, to think and act for your best interests, I should consider myself subject to the severest censure, did I not at every stage of my investigations give you the benefit of my best judgment from my point of view.

My information is not obtained from people in authority, for while Hermann remains and in the present state of affairs it would be most unwise to show our hand to people in authority. But I have been able to learn to a certain extent what people in authority *think*, and since I wrote the letter to which yours is a reply, I have after two weeks' effort this morning succeeded in learning to a certain extent what is being done.

I said the order created a great sensation, and you ask in what way this has been evidenced. In this way: all the attorneys who  
632 are practicing before the Department are more or less excited about it, all the working force of the Land Office and Interior Department are wrought up and in an unsettled and restless state of mind over it, a number of interested solicitors have been at the office or have written to enquire what it means, and as the attorney of record in so many cases I have been approached by a number of persons and asked to explain it.

The Commissioner declines to discuss it at all, and his position is not such that any person who desires can run in and talk to him in an off-hand way as you assume. The Commissioner never gives information or advice on any subject, and if he sees you at all, he merely listens to what you have to say and then refers you to the head of a division, who in this case would without doubt inform you he knew nothing about it. As I consider such a course would be highly injudicious, I have not tried it.

The publicity amounts to this, that the order is day by day becoming generally known—that is, the fact of the order—and as it directly involves such a large number of persons, it is bound before long to become public property, and if the press should hear that a secret order of that kind existed, you may rest assured they would leave no stone unturned to give it to the people and make it as sensational as possible.

If you do not proceed in the way I suggest I do not know what the consequences will be, neither do I think any one person in the  
633 Department, from the Secretary down, could answer that question, but this I do know, every selection in your or the Company's name has been listed, with a full statement of the names of all the grantors and grantees, from the Government back to the Government. All 16 and 35 base Sections have been listed, with the names of the State's purchasers and their grantees. These lists have been sent to "N" the mineral, and to "G" the frauds division and there carefully revised and segregated; they were then placed in the hands of special agents (how many or who, I have yet to find out) who took them according to reserves and land districts, and are now either on the way or on the spot working up their particular assignments. This information only came to me in reliable form and in detail two hours ago, but you can depend upon it.

As soon as I have finished this letter I will try to frame a wire to cover this.

I note your telegram that S. had been interviewed again, the result and what you are doing, but that is merely a confirmation of the above.

So far as I *know*, Mr. Browne has not talked with anyone, but he is too careful a man to give an opinion without reasons, and I do not think it advisable to question the foundation upon which he based his views. I am following up my own "still hunt" in my own way, and am satisfied that my information bears out his judgment.

The suspension order will remain until one of three things occurs: sufficient affirmative proof offered to force, or at least justify the re-

634 voking of the order; proof obtained by the special agents to the satisfaction of the Department, that frauds were committed, in which case when the mine is completed, it will without doubt be exploded without warning and given to the public; or that the special agents fail in their investigations and the Government is forced to admit the whole thing a "mare's nest," in which case the order would be revoked with as little noise as possible, which last uncertainty is one of the reasons for keeping the matter secret now.

I fully appreciate your explanation as to the methods pursued and the class of persons who became State purchasers but this was an error in judgment and in no way alters the present situation, except to make your position the harder, while if the facts stated in your letter were known, it must be clear to you that nothing we could do would call the Government off or in my opinion prevent a prosecution.

I am working and writing only in your interest, and I do not want you to misunderstand anything I may say, but we are facing sober conditions and facts and must face them. The truth is that the laxity of the system you employed is the cause of all this, and as a consequence you are at this moment sitting over a mine that may be set off any moment, and some move *must* be made, and at once.

I did not suggest that you find *all* these people, for I know that would be impossible, as in the case of Mr. Bonacci to whom you refer, but some of them could be reached, and every one found goes that far towards showing the validity of the purchase  
635 and establishing a rule of regular procedure.

Frankly you were making money too fast and got careless, thereby laying yourself liable to such a calamity as has happened, and now it is a question of not what you would like to do, but what is open for you to do that you can do and benefit yourself.

The matter is past the stage of mere cancellation, although that would follow if nothing were done by any of the selectors, but it is evident that all these people who have paid thousands of dollars for their lieu and the perfecting of their selections, are not going to let them go without a big fight and they would not care much who was hurt if they saved themselves. I am positively informed

that what the Secretary is after, is not the cancellations of the selections only, but proof sufficient upon which to base a Federal prosecution, on the ground of fraud on the Government in knowingly offering a fraudulently obtained and worthless title with intent to defraud.

The whole thing has been taken out of the Land Office, and is wholly with the Secretary. I will promptly inform you of further information."

Witness was then shown exhibits 388 & 389, and he identified the same as having been sent to him through the mail by Leon Samuels; and stated that he had sent the same by mail to A. B. Pugh, counsel for the Government in this case, a week or so ago.

He was also shown Exhibits 390, 391, 392 & 393, and he stated that they were handed to him by Secretary Hitchcock of the Interior Department for investigation.

636 He was also shown Exhibits 394, 395, 396, 397, 398 & 399, and he stated he had received them in answer to an advertisement that he had inserted in the San Francisco Chronicle.

He was also shown Exhibits 400 & 401 and stated that he had received them from the same source and in the same way.

He was also shown Exhibits 402, 403, 404 & 405, and stated that he had seen them before and that they had been offered in evidence by the defendant Henry P. Dimond at the hearing before Commissioner Heacock in San Francisco, California.

#### Cross-examination.

By Mr. WORTHINGTON:

I was in the Government service 18 years continuously. Resigned in September, 1906.

First employed in the Secret Service, Treasury Department until May, 1903, when I was transferred to the Interior Department to investigate land frauds. While I was in the Treasury Department my duties in a general way were investigating counterfeiting, and other depredations against the Government.

Don't recollect that I had with me when I talked with Schneider but the one letter from Colonel Zabriskie. Don't think I did. My recollection is I showed Schneider three letters, two written by him, and one from Zabriskie. Am not absolutely certain.

637 May possibly have shown him another letter. May have shown him those other letters and forgotten it. I took notes, but not full notes, when I talked with Schneider. Knox Corbett, I don't think, made notes during the interview, but subsequent to the interview, I think he did. Am not sure whether I made notes, and if I did make them, not sure whether I now have them. If I did reduce to writing what took place at that interview, it was possibly immediately after it, in the shape of a memorandum.

I was located in Los Angeles at the time, and it may be that

I wrote to Judge Pugh about the interview within a day or so afterwards, or it may not have been until after I returned to Los Angeles. I think I was at Tucson a week or more, maybe not quite so long, and then I went back to Los Angeles. Think I simply wrote Judge Pugh that Schneider refused to make an affidavit. Think I made a full statement of that interview immediately afterwards, in the shape of a memorandum.

I think the only change Schneider made in the Holsinger report as I read it to him was that his wife had nothing to do with the matter.

My recollection is that he told me he left Hyde's employ in December, 1901. I was particular to find out the time he left.

He spoke more particularly of being in the employ of Hyde—Hyde and Benson, yes, sir; but he gave me the impression that Hyde was the man he made his arrangements with and reported to, but that he knew that Benson was also a partner with Hyde.

“Q. That is from 1879 down? A. Well, I don't recollect 638 about the 1879 at all. I remember he said, I think he said 20 years, in expressing it to me.”

He said that for many years, up to December, 1901, he had been in the employ of Hyde and Benson as a clerk.

He said he was in Hyde's employ, at work for Hyde, for about twenty years, and said he quit Hyde in December, 1901. He said Hyde and Benson were in partners from the time they began to take up those school lands. Don't remember his stating anything specifically about forest reserves. He stated that everything in the Holsinger report was true. He didn't tell me that he was in the employ of Hyde and Benson from 1879 down.

He gave me to understand very plainly that Benson was in partners with Hyde from the time they took up the school lands,—began to take up these school lands. Don't think he said he was in Benson's employ directly or indirectly, prior to that time.

I read the entire report first, and then Schneider asked to read it, and he read it; and then I went over such portions of it as were interesting to me, and discussed them with him. We first took up the time he was in the employ of Hyde and Benson, or rather Benson's connection with it. My understanding was that it was just as I have stated, from the time they took up the school lands. I got this understanding from what he said. He told me about going to Zabriskie. I discussed that with him. Then I discussed the writing of these letters by him. I asked him what his purpose was in writing the letters, and then how he came to

639 refuse at the time I called on him to make an affidavit, and asked him if any person had been to see him since he had written the letters and then again since Judge Pugh and Mr. Steece had called on him. Now, I think it was in the discussion of the—I think it is the third paragraph, beginning “Mr. Schneider's story is as follows: From January 1879, up to January 1, 1902, Mr. Schneider was in the employ of F. A. Hyde

and John A. Benson." I think it was when we started to read that that he told me that Benson was only in with Hyde from the time they took up the school lands. He told me also that while they were partners together that they detested each other.

I remember discussing with him this feature, where they inserted advertisements in the papers. I remember his telling me that when they made out the papers, the papers were all made out together—that is, the application and the relinquishment for school lands. I remember him telling me about Mr. Dimond being sent to Washington. I discussed the Oregon land deals with him. Also, the California State Land Office. I remember his telling me about Forest Superintendent B. F. Allen and Agent Prior. I discussed Prior especially with him, and endeavored to get him to tell me of other deals that Prior had had with Hyde; and my recollection is that he told me he did not remember. I remember discussing the amount of money that was paid to B. F. Allen and he said he was unable to tell me that. I remember his telling me about Jennie P. Blair and Elizabeth Dimond; but don't recollect discussing those other names with him. I asked him if he did  
640 not tell Mr. Holsinger he would swear to this at any time and testify to it; and he stated he did. I remember discussing this point where he says, "They finally failed to pay different sums promised, and Schneider quit." My understanding from Schneider was that they put him out. To the best of my recollection, that is what I discussed with him in the report, but our discussion was an hour or two hours long. I discussed a great many points with him. I went over the entire situation, and urged him very strongly to make an affidavit.

*J. Knox Corbett.*

Direct examination.

By MR. BAKER:

Resided in Tucson for 28 years. Been postmaster for about 11 years. Became acquainted with Schneider in 1903. Became acquainted with William J. Burns in July, 1903.

First met Burns at my office in the post office at Tucson. Burns brought a letter of introduction from the Postmaster General at Washington. Burns showed me the Holsinger report, and three letters. I read them all.

Witness was then shown Exhibits 351 & 353, and Exhibits 28 & 29, and the same were identified by him as the report and three letters handed to him by Mr. Burns. After reading these letters and the report I sent for Mr. Schneider and he came to my office, and I had an interview with him. The first interview was with Schneider alone.

The further examination of this witness as to admissions  
641 or confessions made to him or to the witness Burns in his presence, by the defendant Schneider, was taken subject to the objection and exception above noted in connection with the testimony of the witness Burns.

The WITNESS (continuing): I told Schneider there was a gentleman here who wanted to have an interview with him. I said: "Unless you assure me that you will keep this matter secret I won't say any more about it." He assured me that he would keep it secret, so I told him there was a gentleman here who wanted to have an interview with him and wanted him to sign an affidavit setting forth the truth of the statement he had made to Special Agent Holsinger. He assured me he would consider the matter confidential and I then sent out and got Mr. Burns. Before I sent for Burns I told Schneider that I had read the Holsinger report and the two letters written by him and one by Colonel Zabriskie. He expressed regret that this matter had come up and stated that he thought it was dead. He said: "My God, have you dug up that thing again? I thought it was dead." He said he would sign the affidavit, but wanted to see his lawyer first. He asked me if I was a Mason and I told him I was not. He said if you were a Mason, I could talk to you in secrecy. I suggested that he go and talk with Mr. Freeman who was a thirty-third degree Mason and President of the Consolidated National Bank, and one of the levelest headed men in the country, I thought.

In the second conversation he said he couldn't sign the affidavit; that he had given a Masonic pledge to a man by the name of  
642 Walter K. Slack, of San Francisco, who had been employed in the same office with him for years; that Slack's brother had gotten into some trouble and committed suicide and that Slack told him that if he signed the affidavit he would involve him and he would commit suicide and that his blood would be on his (Schneider's) hands.

Schneider told me that he had worked for Hyde and Benson for about 20 years, and went out of their service in 1902. He said that while he would not sign the affidavit, if the Government would put him on the stand he would testify substantially to just what was in the Holsinger report. He said that he had a falling out with Mr. Hyde; that he was promised a certain rake-off, which he never got, and he was down in that country and was broke and wanted money; that they would not give it to him, and that he was mad at the time he made the statement.

Mr. Burns read the Holsinger report over to Schneider in my presence. Burns, Schneider and myself were present. Schneider then read the report himself. He said that while it was true, he would not sign it. Mr. Burns asked him why he would not sign it. He said, "Well, I want to see my lawyer." Burns took him to task for not signing it; I mean making affidavit to the report. Burns asked him what attorney he was going to see and he said Mr. Hereford of Hereford and Hazard. Burns said that would not be right, that Hereford and Hazard were attorneys for Hyde. That was what led up to my suggestion that he talk with Mr. Freeman. He went  
643 out to go to Mr. Freeman's office, and he went around the block and went into Mr. Hereford's office and they went together to see Mr. Freeman. This conversation lasted fully an hour. I cannot think of the whole course of the conversation.

Mr. Burns asked Schneider himself as to how they took up these



lands, and Schneider told him by using office boys, boot-blacks and dummies. He only mentioned one name, and that was Elizabeth Dimond. He said he gave for her address, his own address in Oakland. This was said when Burns was questioning him as to the mode they proceeded in taking up these lands.

All I remember about the Zabriskie letter is that Schneider said he got Zabriskie to write it. All that I can remember that he said about the Holsinger report is that he said it was true and if the Government would put him on the stand he would testify to substantially what was contained in it.

The next time I saw Schneider I sent for him. I think it was the following day. Mr. Burns was present. Schneider was hauling the mail from the post office and return, and it was not very hard for me to catch him. Schneider still protested that he would not sign the affidavit. I cannot state positively, but I think Schneider saw Burns in my presence two or three times and probably four—at least three times. Burns stayed there several days, I cannot say exactly how long.

I saw Schneider quite often in the fall of 1903, and he would ask me nearly every time he would see me if I knew what the Government was doing about that case, and I told him I did not

know but could find out. He said: "I wish you would."

644 So I wrote to Mr. Burns. In the first part of the month of January, 1904, Schneider told me that this matter was giving him a great deal of trouble and he could not sleep at night; that it was worrying him a good deal and he would like to get it off his mind. He said he would be willing to go to Washington and go before the authorities there and make a full statement. I said: "If you want to go I can fix it, so you can go." He said: "All right, if you will fix the transportation I will go with you." I told him I would go with him, and I went down to the railroad and ordered two tickets and Schneider and I came to Washington. Mr. Hazard of the firm of Hereford and Hazard came along with us. I first learned that Hazard was coming the day before. We came on the same train until we crossed the Potomac River and then Schneider and Hazard got off the train on this side of the river; I did not see them get off but the porter told me they got off. I went through the train and couldn't find them. The train stopped just this side of the river.

I know W. K. Cole of San Francisco. In one of my conversations with Schneider I told him that Mr. Cole had been in Tucson a few days before to see him about the Holsinger report to get him to sign an affidavit. Schneider said Mr. Cole was an old friend of his and that he thought a great deal of him. Schneider volunteered to come to Washington but there was a subpoena served on him also.

When the letters I have referred to were read to Schneider, he said they were true.

645 Cross-examination.

By Mr. WORTHINGTON:

Been postmaster about eleven years. Salary \$2800. Had a talk



with Burns when he came out of the court room a while ago, just as he left the stand.

In the interview with Schneider I think I could positively say that I think I only saw one letter from Zabriskie.

Schneider spoke about counsel about the last end of his conversation with Burns and myself. He said:

"I will sign that, but before I sign it, I want to consult my counsel."

"Q. You have spoken several times of his being asked to sign something. Was there anything prepared for his signature? A. No, sir; I never saw it, if there was.

"Q. Was he asked to sign the Holsinger report? A. He was asked to sign an affidavit setting forth the truth of the Holsinger report.

"Q. There was no such affidavit prepared and presented to him? A. No, sir; I don't think there was any affidavit handed to him, or that it was in evidence there. I never saw it. I don't remember seeing it.

Burns read the report to Schneider, and he read it himself. He said everything in it was exactly right, and while it was true, he would not sign it. He did not say that there was anything  
646 in the report that was not correct. He said several times that the report was true. He made no qualification or explanation, but he said if he was put on the stand, as near as I can quote him word for word, he said, "If the Government put me on the stand my testimony would be substantially what it is in the Holsinger report."

When he read the report and came to that part which speaks about him wanting an understanding that he would not be prosecuted, nothing was said about it at all. (After that part of the report in relation to the understanding about not being prosecuted was read to the witness, he says there was some discussion regarding that, but he cannot remember it.) Something was said about it not being legal to promise a man immunity, or something like that, but I don't remember. Mr. Burns said he could not promise immunity. Burns said if he would go on the stand and testify, he would be a Government witness. Burns would not promise him that he would not be prosecuted. That was the one promise he would not make to him. Burns said he was not authorized to make any promises. Cannot say in what part of the conversation this occurred. Think it was in the latter part of it. Recollection is that he said the thing was true and he would swear to it and then he talked about immunity, but I couldn't say positively when the question of immunity was discussed.

Knew Schneider by sight for about a year before this conversation with Burns. Cannot recollect that Schneider, in any of his conversations, said anything about being on Hyde's ranch. Did  
647 not specify any particular work that he was doing, only that Hyde was a real estate man, and owned vast tracts of lands and ranches. He said he had been Chief Clerk for a good many years, and after that his duties were mostly on the outside,

which caused him to travel a great deal. Didn't say whose ranches he had worked on. Didn't say anything about what his compensation had been. He said in the latter years he had been employed by Hyde and Benson. Didn't say for how many years. He didn't say in what capacity he was employed by Hyde and Benson. Didn't say that Hyde and Benson had the same office, or that they were in business as a firm. Did not explain what he meant by saying that he was in the office as clerk or out-side man of two men who were not in the same office. He did not say they were partners, or not partners.

"Q. Did you say a little while ago that he told you he was in the employ of Hyde and Benson for about twenty years? A. No sir; that he said that he was in the employ of and was chief clerk for Hyde for a great many years; and that altogether he worked for these people for twenty years—about twenty years.

"Q. Did he say he was working for both of them for about twenty years? A. He stated that the first part of his service there was a chief clerk for F. A. Hyde.

"Q. And in the later years he was working for Hyde and Benson; is that it? A. Yes, sir.

648 "Q. Then he did not say he was in the employ of Benson at all, in any way, until later years? A. That is all.

"Q. And he did not state just how? A. No, sir."

He said he had had a falling out with Hyde, and that they had got him off down in this country, and now he was broke, and that he was asking them for money because he was promised a rake-off. That he had made millionaires out of these fellows and that now he was broke and they wouldn't give him any money. He said that while Burns was there. Didn't say anything about having any trouble with Benson. All he spoke about was his trouble with Hyde. Did not say anything, except that Hyde would not give him a share. The word "rake-off" was his expression.

At first, Schneider said he would sign the affidavit. Afterwards, he said he would not sign it until he consulted his attorney. Then Burns told him that he was not acting sincerely by going to see Hereford, as Hereford was Hyde's attorney. Burns told him to go and see some other lawyer, who was not interested for Hyde, and who would give him an opinion that would not be biased. Hereford & Hazard's office was right next door to the post office. I would not state whether I saw him going in or coming out of Hereford's office. I went with the United States Marshal when he served the subpoena on Schneider to come to Washington.

Burns and I both made notes at the time of our conversation with Schneider. I only made a few notes. Burns asked me to  
649 keep track of the names. He made a good many more than I did. I destroyed the notes just after I went before the grand jury in Washington. Did this of my own volition.

Cross-examination.

By Mr. BIRNEY:

Schneider didn't say he had asked Benson for any money. The

only time he had used Benson's name was that he had worked for him in later years. He did not say how long a period "later years" meant. Just said his duties were outside. Beyond that one statement, don't think Benson's name was mentioned.

Redirect examination.

By Mr. BAKER:

When the Holsinger report was read to Schneider, he said something about not wanting his wife mixed up in the matter.

When Schneider spoke of making somebody millionaires his language was: "I made millionaires out of those fellows."

In the conversation I had with Burns after he testified, he did not say what he had testified to, further than one thing. He asked me whether I remembered whether he made notes at the time, or afterwards, during the conversation; and I said my recollection is that you made them both before and after—that is, you made them during the conversation, and then afterwards.

650 WILLIAM J. BURNS, recalled for further cross-examination.

By Mr. WORTHINGTON:

Since I left the stand I asked Mr. Corbett if he remembered whether I took notes, and he said I did. My recollection is I took the notes during the interview, while Corbett and Schneider were both there. I don't think I made any more notes. I can't find the original notes.

S. J. HOLSINGER, direct examination.

By Mr. BAKER:

At present mine superintendent at the Standard Iron Mines, in Coconino County, Arizona. Reside at present in Phoenix. Special agent for the General Land Office in 1902. From July, 1897 to April, 1903, was special agent. Then transferred to the Forest division, where I remained about eighteen months. Resigned from the Government in 1904. Know the defendant Schneider slightly.

Met him for the first time in November, 1902, at Tucson, Arizona. Never saw the letters purporting to be signed by Schneider. I received a letter from the Commissioner of the General Land Office, calling attention to certain complaints of land frauds made by Zabriskie. I was directed to investigate.

651 Some time in the early part of November Schneider called for a few moments at the Land Office. Said he wanted to see me. So that in the afternoon of the 5th of November, I called at his office.

The further testimony of this witness as to admissions or confessions made to him by the defendant Schneider, was taken subject to the objection and exception hereinabove noted in connection with the testimony of the witness William J. Burns.

The WITNESS (resuming): He then vaguely hinted that certain

land frauds had been perpetrated on the Government and that he could tell me quite a story, but preferred not to go into it until his attorney, Zabriskie, was present. By appointment met him at Zabriskie's house on the evening of November 6, 1902.

Schneider then said he had been employed by Benson and Hyde from '79 to January 1st, 1902.

"A. He told me he had been employed—that at that time and for, as I understood it, three years or more, the firm was known as F. A. Hyde, although Benson had an equal interest; but he said that for all the time that he was employed for the period that he named, that he had been employed in various capacities for these people; but that during the last three years that he had been actively engaged in what they termed the land department of their business.

"He said that during the past three years; that is, prior to January 1st, 1902, that he had been engaged in this land department and that, among other things, they had perpetrated a great many land frauds. He then went into the matter of telling me how these land frauds were perpetrated; that the object was to secure lien land scrip for the purpose of selling it, and that in order to get that scrip they had made fraudulent entries of state land.

"He said for a while—well, he mentioned the various reserves that they had secured land in. The first he mentioned was the Sierra Forest Reserve. He said that they had made a good many fraudulent entries in that reserve; and he also mentioned the Cascade forest reserve, of Oregon. He said that about three-fourths of the school land entries in the reserve were fraudulent; and that all of the entries in the Tahoe Lake reserve in California, were fraudulent; and a large percent of the Zaca Lake, the Pine Mountain and San Jacinto—I believe the additions to the San Jacinto.

"In describing how these were perpetrated, I was especially anxious to get names, so as to fix some data, and have some data to work on. I asked him if he could remember some of the names and he said yes, he could; but not a great many. He requested that I get letters from the land office, of all the entries that had been made on the reserves that he had named. He gave as an instance the name of McAvoy.

"He said that at first, when they began to float these dummies, that they usually hired a man and gave him ten dollars to make an entry; that is, to file papers, but the man knew nothing about the land, and he did not go to Sacramento; he went before a notary, and they usually gave him ten dollars. But finally that became inconvenient, and they resorted to forging the names to these applications and, as an instance, he said they would put an ad in the San Francisco papers advertising for a clerk. In this way they would get a good many names. He mentioned this instance: He said they advertised for a clerk and a man by the name of James McAvoy, of Martinez, California, answered that advertisement, and Mr. Benson handed him this man's letter to which was signed the name of James McAvoy, and told him to

change that name to Calvin A. McAvoy. He said he did so, and forged his name to this application for school land and, at the same time, he said, in order that the signatures would agree they would sign up all the papers in blank that were necessary to make this filing in the State Land Office, and then secure the scrip from the Government, even to the deed from the individual, back to the United States.

"I asked him for other names, and he mentioned the name of Jennie P. Blair, of Portland. He also mentioned the names of Mary D. Tenmyon, of San Jose; then the name of A. Appett, of Oakland. I remember his especially mentioning one Elizabeth Dimond, and he gave me her address, and said that was his address in Oakland, 611 East 15th Street; and he said that they had had some trouble with her entry, or the dummy entry. There was no sue hperson, he said, as Elizabeth Dimond, that he signed his name to correspondence—he received letters from the Department and answered them and signed Elizabeth Dimond's name to the letters.

651 "Then he told me, too, that some Government agents were interested. He intimated that the day before, and I asked him what agents, and he named B. F. Allen, Forest Superintendent, and Special Agent Pryor. He said that early in 1900 Allen was invited to come to the office and was very soon given the privileges of the office, and usually entered by a private door of Benson's office. He said later that either Hyde or Benson, I don't remember which, told them that they had to take Mr. Pryor in; and I asked him whether any money ever passed between — that he knew of, and he said that Allen at one time asked for a loan and was accommodated. As to Pryor, he told me that he presented Pryor with a fine Durham bull at one time, and he asked Hyde what account he should charge that to and he told him to charge it to profit and loss, that he had made old man Pryor a present of the bull.

Then, speaking of where they had made these entries, and the method; he told me that during the last couple of years, or I think he said the last three years that he was in their employ, that he would divide his time up between San Francisco and Sacramento; and that he was a great deal at Sacramento on account of making those entries in the State Land Office.

"He also stated that the Land Officer there stood in with them and understood this, and received a certain amount of money from them; and always saw that these entries were made, no matter whether those of other applicants were made or not. He 655 said that at certain times he had been there there had been genuine applications made for the same land that he secured, but the officer would tell them that a great many entries had been made and received in the mail but not yet filed; and that they had better leave their applications, and as soon as the application was left he would tell them, "here is an entry; you had better get an application made for this;" and he would immediately prepare a form and they would file it, and then notify the man that they had made an entry of that; so they got the land.

"In making these forest reserves, he stated that Benson and Hyde would agitate the forest reserve matter all they could and make it look very plausible and, in fact, worked in a very good cause; but at the same time they would try to fix these reservation lines and use these officers to do so, so as to include all the school land it was possible to include, regardless of whether it was valuable for forest purposes or not. In that way they had fixed some of the boundaries—that they had freely consulted these officers—they were consulted about fixing the lines, and they always managed to accommodate Hyde and Benson in some way, so as to get as much of the school land as possible.

"I asked him to swear to the report; that is, if I would prepare a report, if he would swear to it; and he said he would if I would guarantee him immunity from prosecution—that that was all he wanted. I then said, "Now, Mr. Schneider, you have acknowledged to me that you"—and he said now, by the way, the names  
656 on some of these fraudulent entries were forged by a man by the name of Slack, in the office; and he mentioned that these names that he mentioned were names he remembered because he had forged them himself. He also said his wife had forged some of them. I asked him why he would draw his wife into a thing like that, "Well", he said, "They told her there was no danger, and really was not any harm anyway, because the state of California got their money for the land, so nobody was injured"; but said that the reason he had her forge some of the names was because her handwriting was a little different from his, and there was not so much danger of it being noticed. They used these names that they would receive from advertising, or otherwise, as copies to forge names. They would always change the first names, as I mentioned in the case of James McAvoy—they changed it to Calvin A. McAvoy, but imitated the handwriting.

"He mentioned also that he had actually drawn a map of the proposed Lassen forest reserve; that under Mr. Hyde's direction he had actually drawn that map of that proposed reserve; and that after it was known that there was a movement to make a reserve, some prominent man there, whose lands were not included, would make trouble over it, and he had to change it. I remember his mentioning that at the time, though that has not been made a reservation.

"He said they were watching all these reserves, and were all ready to make these dummy applications wherever reserves were made; and that the method followed was to get information here  
657 in Washington; and that they had sent a man by the name of Harry Dimond here to make some arrangement with a department clerk; that he came back and told them that he had made arrangements with this clerk at the rate of two cents an acre; and that as soon as these recommendations for forest reserves were sent to the Department and acted upon and a proclamation was drawn and ready to send to the President, or had been, that this clerk would notify them and then they would file their dummy applications; and that would complete the transaction.

"That, as far as I remember, is about all that he told me. I was

anxious to get his sworn statement from him, but he refused to give that until I would give him a guarantee of immunity, which I could not do without authority from the Secretary.

"I asked him also, but I believe I mentioned my doing this, as I said, "Mr. Schneider, you must have some object in telling this, other than a citizen usually has in giving information." He said he was doing so because they had not treated him right; that they had offered him compensations which they had never fulfilled; and that he had finally urged them to pay him these amounts. He never mentioned what they were, but said he was to receive benefits other than his salary, which they failed to give him; and that he threatened to resign and he thought they would not let him, but they did. He said, "Now I want to get even with them. That is my only object."

Schneider said that outside of his salary he was to receive  
658 something further for assisting in carrying through these frauds—signing these names. He didn't say what it was, but gave me to understand it was money, and that they had not paid him. Said H. and B. had made a great many thousand dollars out of these fraudulent transactions.

Said that there was a notary who was in on the matter, named Alexander. Said they could take these dummy applications to Alexander, and he would certify that the persons appeared and executed the papers. That Alexander lived in Oregon.

Conversation lasted probably an hour and a half. This conversation took place on the 6th of November, and I reduced it to writing on the 12th of November. That is to say, I wrote my report to the General Land Office on the 12th.

Witness was here shown Exhibit 351 and asked to examine it and to state what it was. He answered, that is my report to the General Land Office.

"Q. You referred, in speaking of Allen, to his calling at Benson's office? A. Yes, sir.

"Q. I will ask you whether or not it was at Benson's or at Hyde's office?"

This question was objected to by counsel for the defendants as leading, whereupon counsel for the Government said: "I will read the report and ask him to refresh his memory from reading the report."

Counsel for the defendants and each of them, objected to  
659 the witness refreshing his recollection by memoranda or report which he says he made six days after the interview, on the ground that the witness can refresh his recollection only by memoranda which were made, if at all, practically simultaneously with the transaction to which he refers, and that he could not write something down a week or a year or a month afterwards and then refresh his recollection by that, and the further objection that it must appear that there is some point upon which the memory of the witness needed refreshing; that he had narrated, he said, the entire conversation, but does not say that he does not remember any of the facts which were narrated to him by Mr. Schneider and hence



it is improper for counsel for the Government to attempt now to refresh the recollection of the witness when the witness does not require it.

"The COURT: I think the witness would have to state first that his recollection was, in fact, refreshed. If the Government cares to press this, I will let the witness examine it and state whether his recollection is refreshed by it.

To this ruling of the court, counsel for the defendants and each of them duly excepted.

"By Mr. BAKER:

"Q. I want you to examine pages 5 & 6 of the report, commencing at the last paragraph on page 5.

"The COURT: Notice that the question is whether, on reading that, your recollection is, in fact, refreshed. Do you remember, after reading that, something that you did not remember before?

660 "The WITNESS: I will say that my memory is refreshed, so far as that is concerned, by reading it.

"The COURT: Now, after reading that, he may make any correction or change or addition, that he desires to make, of his testimony, in explanation of it.

"A. I will just say, in regard to that, when I refer to Hyde and Benson, I mean the firm, as he told me. I knew neither one of these men. I do not know them. I never, only incidentally, heard of them before he gave me this story, and I know nothing about them; but F. A. Hyde's is the office that I always had in mind, and that is the only office I know of. When I speak of Benson's office, I mean F. A. Hyde's. I simply used the names interchangeably because he told me they were one and the same concern. I did not know that Benson had a separate office, if he did. I don't know a thing about that. It was the office that Schneider worked in.

Cross-examination.

By Mr. WORTHINGTON:

I was not acquainted with Schneider up to the time he called at the Land Office at Tucson. The next time I saw him there were no disclosures; just made an appointment to see him later. Then, the third interview occurred with his attorney, Zabriskie. Saw Schneider a great many times after that. A number of times he met me and asked if I had heard anything from Washington. Never had  
661 any other conversation with him about the details of the alleged fraud. My whole conversation with him on that subject was at my third interview, when Zabriskie was present. Zabriskie was a lawyer. He is now dead. The only notes I made at the third interview were some names—the names of Elizabeth Diamond, McAvoy, Appett, Jennie P. Blair, Mary D. Tenmyon and Alexander. I had only a brief memorandum—these names and probably a few dates, because he told me he would go into greater detail when I secured this immunity from prosecution for him, if I could, and that he would go with me to San Francisco with the



Government agent and substantiate with proof these allegations. I kept the memorandum of names, and probably some dates, until after I wrote my report.

I knew Zabriskie, but I had no conversation with him about what Schneider would say. Zabriskie participated in the conversation, and really introduced it by saying that Schneider had been telling him about frauds perpetrated by the Hyde firm and that he, Zabriskie, had advised him as a friend, and as an attorney, to make a clean breast of it, and he was there for that purpose. Nothing was said at that time about Zabriskie's trying to get a position under the Government. And at no other time did Mr. Zabriskie ever speak of anything like that.

Schneider said he had been employed from '79 to January 1902, by Hyde and Benson. That the firm was known as F. A. Hyde. I would not say that during all that time he said it was Hyde or Benson, but that during that time of these land frauds he said Benson had an equal interest with Hyde. He did not say that prior to that they were both in the same firm. I did not question 662 him about that, and don't know. From January, '79 to January 1st, 1902, Schneider was in the employ of Hyde and Benson as clerk. He told me that. No doubt about his telling me that, and that all that time that business was done under the name of Hyde. I understood him to tell me in substance that while the business was in the name of Hyde it was Benson's office and Benson was, as a partner, interested. Didn't understand that Benson had a separate office. Refreshing my recollection from the report, and the matter was fresher in my mind then, I wrote down Schneider's statement just as nearly as possible for me to do it. Hyde and Benson during those years were doing business under the name of Hyde. Schneider said this land fraud business began with the Sierra Forest Reserve. During the last three years Schneider said he was engaged in the land department exclusively. Don't remember that he said anything about being on a ranch. I remember he said he had worked in various capacities, but didn't say what they were. He mentioned—it is not in the report—that he kept the books of the firm. He said the first dummy applications they made were in the Sierra Forest Reserve. If he had mentioned any prior fraudulent transactions I would probably have mentioned it in the report. Schneider didn't tell me how much of what he was saying he knew himself from personal knowledge and how much had been told him by somebody else.

"Q. Did Mr. Schneider tell you how much of what he was telling you he knew from personal knowledge, and how much of it he had been told by somebody else? A. No, sir.

663 "Q. You didn't ask him to distinguish between what he knew of his own knowledge and what he had heard from somebody else? A. Of course, I asked him about some of these names, and who had forged these names, and he told me that he had, himself.

"Q. And that his wife had forged some? A. Yes.

"Q. Did he tell you whether he was telling you things that he had

participated in himself, or things that he had heard from somebody else? A. He didn't tell me that."

I wrote down the names of James McAvoy and Calvin A. McAvoy on this piece of paper. No mistake about those being the exact names he gave me.

He didn't tell me in connection with what reserve any of these names had been used. Simply that they had been used. He wanted me to get a list of the entries. Said he could identify them if I could get the list. Didn't tell me how many his wife had forged. Gave me to understand they had forged a great many. Most of them had been forged by himself and wife. I am positive about that. He told me Keigwin was an attorney employed in Washington to get these forest reserves through, but he didn't say whether Keigwin knew about it or not.

He didn't mention the name of Britton & Gray, because I knew of that firm, and would have remembered it. Don't think he mentioned Holcomb & Keegan. He was a little weak on names. I remember that, because I thought I ought to get more names, 664 and urged him to remember names, so he could give them to me.

"The fact is, I did not believe them all. I knew he had some object in telling me this, and I knew it was not probably an honorable one."

He gave me the impression that he was trying to get revenge on these men because they didn't pay the money. He said he wanted to get even with them. He spoke in a bitter way against them.

"Q. Did he speak with equal bitterness of both Benson and Hyde, or did he seem to have a particular animosity against any one of them? A. No; he spoke of them in the same way. When he spoke of Hyde—When he spoke of them, I always understood it was Hyde and Benson."

He told me he had tried to get money from them and couldn't do it, and that now he was going to get even. Didn't tell me how much money he was trying to get, and didn't tell me who his conversation was with when he asked for money. He said he had been trying to get them to fulfill their promises to him, and finally threatened to quit, and, to his surprise, they let him quit.

He said Slack had not committed many forgeries—just a few of them. He said the information they were to get from Allen and Prior was as to the boundaries they were to make. That they kept them posted as to what they were doing in the way of creating forest reserves.

He said early in 1900 Allen had been invited to come to the Office of Hyde and Benson. He said it was after that that 665 Prior had been taken into the secret; that they were to give Pryor the liberties of the office, and that Pryor kept them informed as to everything that was going on about forest reserves. He didn't explain how Pryor could give them any information, and didn't ask him anything about that. He said it was after 1900 that Pryor was brought in and afterwards was given a bull. He

said Allen asked for a loan and was accommodated. He didn't say he was present when the loan was made. He said he didn't know the amount of it. I asked him.

"Q. From your conversation with him, you didn't know whether he was telling you something somebody had told him about that loan? A. I do not.

"Q. Or who it was that had told him about it? A. No, sir."

He said Hyde told him to charge the bull to profit and loss. He said after Allen had been engaged early in 1900, Allen was frequently in Hyde's office. That he came in through a private door.

He said about three-fourths of the entries in the Cascade forest reserve in Oregon were bogus. Schneider used the word "dummy." I couldn't say whether he told me three-fourths of the entries in the Cascade reserve were dummies, or three-fourths forgeries. Well, they were fraudulent. That is what I mean by the word "bogus." He said the names which he gave me, of Blair, Dimond, Temvyon, McAvoy and Appett, were dummies—people who did not exist. They were forgeries. So that, when I use the word "dummy," I mean a name that did not exist, but was fictitious.

666 Cross-examination.

By MR. CAMPBELL:

Did not read my report since the time I made it, November 6, 1902, until yesterday, and haven't talked with anybody about it. What I base my statement upon is what took place between the District Attorney's office and myself yesterday, and the recollection of what took place in 1902. Schneider told me he was in the employ of Hyde and Benson as clerk, from January, 1879, to January, 1902. He did not go into details about Hyde and Benson being co-partners during those dates. He told me that Hyde was really the firm of Hyde and Benson. He didn't tell me that during all that time Benson had an interest in the firm of Benson and Hyde. He always used the expression "the office of Hyde." During the conversation he frequently used the name of Benson, but not as much as Hyde. Couldn't say how many times he used Benson's name.

I understood that Hyde and Benson were engaged in the real estate and real estate brokerage business, and buying and selling forest lieu-land scrip. He told me that.

The three years referred to were the years 1899, 1900, and 1901, up to January 1st, 1902, that he had been transferred to the Land Department during those last three years. He didn't say anything about Hyde and Benson owning large cattle ranches.

"Q. Did he say anything to you about his having been a superintendent for F. A. Hyde on his cattle ranch?"

"A. Well, I am not sure but I believe he did speak about cattle ranches."

667 I understood that Benson had an interest in the F. A. Hyde concern, and when he spoke of that, I supposed he meant this firm. I didn't know what other interest they had. We were talking about their land business. I understood Benson had

an interest in it during the years 1899, 1900 and 1901. He didn't tell me what kind of an interest Benson had. Just said he had an equal interest. Didn't tell me anything about the contract between Hyde and Benson made in 1898. He never said he did a day's work for Benson. Said he worked in the office of Hyde, and that Benson had an equal interest. He didn't say who paid him his salary. He didn't say Hyde—he said they—had promised to give him something more than his salary. I could not use the language. He might have said Hyde, he might have said Benson, and he might have said they. That is as far as I can remember. He didn't describe how scrip was placed on the market.

When he spoke about advertisements being inserted in the San Francisco papers, and that Hyde's office was in San Francisco, I understood that Benson was a part and parcel of that office. When I said, a moment ago, that Allen would go in and out of the side door of Benson's office, I had reference to this F. A. Hyde office. When I spoke of Hyde or Benson, I had reference to that particular office; that Hyde and Benson had an interest in the office. I didn't know there were two offices, and don't know it now, and didn't know there were separate clerks or separate departments, or that

658 there were any quarrels between them about the acquisition of these lands. Schneider told me nothing of the kind.

He told me Harry Dimond was sent to Washington to obtain the assistance of some clerk to keep the firm of Hyde advised in relation to the creation of forest reserves. They were to be advised when a recommendation went into the Department to set aside a forest district; that is, withdraw it from entry and make a forest reserve. That is, when it was already to be passed up to the President; he kept them informed from the time it was filed in the General Land Office until the proper time came for them to make these dummy entries.

He told me Dimond was sent to Washington in the early spring of 1900. By reading the report, my recollection is refreshed. I mean Dimond was sent to Washington in 1901 instead of 1900.

Schneider told me that he had ceased to be employed by Hyde January 1st, 1902. He didn't mention the month in the summer when Dimond went to Washington. As I remember, he said it was early spring.

What I have been testifying about is based largely upon my report. Since then I have been a very sick man. Have been living in Arizona, and engaged in other pursuits.

"Q. You state here that "after the creation of the Sierra Forest Reserve the Hyde concern entered actively into the agitation in Oregon and in California of movements looking to the creating of forest reserves, and in every instance where one was created they were instrumental in at least fixing some of the boundary lines so that school lands would fall within the reserve." By the

659 "Hyde concern," you meant the firm of F. A. Hyde?

"A. Yes.

"Q. And you understood by that that Benson also had participated in fixing this business?

"A. Yes."

Schneider didn't tell me how he knew Benson had an interest. Just had an equal interest. That was the term he used.

It was a remarkable story Schneider told me, admitting that he had committed forgeries, and all this, and I doubted the truth of it. I did not believe it all. The story was of such a character that I, an employ- of the Government, somewhat doubted it at that time.

*Louis Saloman.*

Direct examination.

By MR. BAKER:

I live in Portland, Oregon. My occupation is real estate and loans. My residence and occupation were the same in 1898 as now. I was then a notary public for Oregon.

I know Joost H. Schneider. He was a well-built, good looking man and I think, if I remember right, he had a sort of blonde moustache.

Asked to identify Schneider; couldn't do it. Pointed out Vander Veer.

Schneider came into my office with a lot of papers. Said they were applications for school lands, and some deeds, for me  
670 to certify to. I said I did not object, if I could see the papers.

He showed them to me. I asked where the parties were. He said they were in Crook County. I said I would not put my seal on unless the parties were there. I told him I could not help him; but that there were parties, perhaps, that would take the papers in hand. I didn't know anything about it, but felt kind of sorry for him. Didn't know him, but told him there was a man just passing the door who was well acquainted in Portland and he could go and have a talk with him, and that he would probably help him. I told him the man's name was Hans, in the real estate business, that he had some houses, and did everything that came along that he could make money out of. Hans came in while we were talking, and said that he could help him. I told him to go ahead; that I would not do anything except what was legal, according to my oath. Hans and Schneider went out together. After a while, they came back with some more men that I knew slightly. One man was named Varney, and another man's name was Mercer, and another one, I think Gay. I think Hans himself was one. Mr. Varney is dead. Hans left Portland. Don't know where he is. Been away three or four years, maybe longer.

When these people came in with Schneider, they said they were willing to relinquish their rights to school lands, and turn them over to Schneider and make deeds for them. I said, all right, if you folks want to do it, I am ready to take your acknowledgments. Some of these parties came before me twice, and others just came and fixed up the papers all together, one or two of them. I don't know whether they were paid money. I didn't see it passed.

671 At this point counsel for the Government exhibited to the witness certain applications to purchase school lands and the

assignments accompanying the same—being some of the papers produced by the witness George G. Brown from the files of the Oregon State Land Office—and the witness identified his signature and notarial seal as they appeared on the papers, as follows:

No. 8657; Applicant, Edw. M. Wright.

No. 8643; Applicant, C. S. Gay.

No. 8647; Applicant, W. H. Mercer.

No. 8646; Applicant, C. A. Varney.

No. 8656; Applicant, B. W. Cody.

The witness (continuing):

Think I was paid a dollar apiece for each paper for these acknowledgments. Mr. Schneider paid it. Nothing said between Schneider and Hans about compensation for Hans getting these parties. Didn't see Schneider pay Hans any money.

When the man who represented himself to be Schneider came to my office, he wanted me to sign or certify to persons who were not there, and he said they lived in Crook County. That is about three hundred miles from Portland.

Recalled to make an amendment to his testimony, says in thinking about the question, he remembers that there was some money paid to those people in his office. Don't know how much.

672

*G. J. Hartmann, Jr.*

Direct examination.

By Mr. BAKER:

I live in Portland, Oregon. Am a machinist; and I know Thomas McCusker. In the latter part of 1898 McCusker asked me if I would take up some school land and sign it over to some corporation or firm. He told me he would give me \$5 if I would take up some of this land and sign it over, and asked me if I would get some other people to do the same, to sign over, and he would give me so much for each. So I got Mr. Cody and his wife, Georgia Cody, my Father, G. J. Hartmann, and my Mother, Mary Hartmann, and Margaret Madigan, a young lady living in Portland. I got all these persons and took them to Mr. McCusker. I was present when they signed the papers, and they signed two papers at a time. McCusker was also present, but I don't know the notary's name. Mr. McCusker paid me \$3 for each person. No notes were signed by any of the persons. I signed two papers myself—the application and the deed. I did not give any notes. I was not asked to give any notes, and I only went before a notary once. The papers were not read over to me. The people I got all resided in Portland.

Application to purchase No. 8608 was then shown to witness and he identified his signature to the application and to the deed of assignment. He further stated that McCusker was present when he signed the papers, and that he signed them both at the same time.

The numbers of the several applications to purchase referred to by this witness, including his own, were then read into the record, together with a statement showing

673

whether the lands were mentioned in the indictment or bill of particulars, as follows:

No. 8603; Applicant, G. J. Hartmann, Jr. Land in bill of particulars.

No. 8609; Applicant, Mary Hartmann. Land in bill of particulars.

No. 8613; Applicant, G. J. Hartmann, Sr. Land in count 13 of indictment.

No. 8656; Applicant, Margaret Madigan. Land in bill of particulars.

No. 8654; Applicant, Georgia Cody. Land in bill of particulars.

No. 8645; Applicant, B. W. Cody. Land in count one of the indictment.

Cross-examination.

By Mr. WORTHINGTON:

I don't know Mr. Eckerson or Charles E. Bennett, Notaries Public. I signed the two papers in the presence of a notary. He saw me sign them, but I didn't notice what he did to the papers. My attention was first called to this matter three or four years ago by Mr. Pugh. McCusker gave me \$3 for each applicant. He offered me \$5 for each and then gave me another dollar on top; so I had \$3 for myself out of each one. I gave each person \$3, and had \$3 for myself. I got \$3 for each person I brought in, and five for my own.

I have not been prosecuted for my connection with this matter, and have never been threatened with prosecution, nor had it been intimated to me that I had laid myself open to prosecution.

*B. W. Cody.*

Direct examination.

By Mr. BAKER:

I reside in Portland, Oregon. My wife's name is Georgia A. Cody. My occupation is expressman. I know G. J. Hartmann, Jr. He wanted us to sign some papers, and kept at me to sign them; and at last out of friendship for him, or something of that kind, I signed them. I think I signed two papers; not more than two. I went before what was supposed to be a notary. Went only once. My wife went the same as I did, and in the same way. We went in a buggy. I was a cripple, and could not walk. I got \$4 and my wife got three for signing the papers. She did not go to the notary but once. Did not sign any notes.

Witness was then shown application No. 8645, and the deed of assignment accompanying same, and identifies one of the signatures on the application as his own; also the signature to the assignment; but — not swear to the other signature on the application. It is pretty hard to tell whether I signed them at the same time or not; but I only signed papers at one time.

(The land described in this application is referred to in the first count of the indictment.)



675      Witness was then shown application to purchase No. 8654 and he identified the signatures Georgia Cody thereon and on the deed of assignment accompanying same, as the signatures of his wife.

(The land described in this application is referred to in the bill of particulars.)

Cross-examination.

By Mr. WORTHINGTON:

I signed the papers at the request and at the accommodation of Mr. Hartmann. I would have signed my name twice to that paper if he had asked me (referring to the application). He thinks the lower signature on the application is not his.

Could not swear whether, at the time he signed the papers shown him, he signed any other papers. Don't know what he signed. Just went there and signed and hurried away. Papers not read over to him. Don't know what a promissory note looks like.

Nothing said to me about signing promissory notes. Hartmann said he wanted me to sell or dispose of my rights in school lands. He told me I had a right to school lands, and a right to dispose of it, and I went there to sign any papers that might be necessary. I did not read them over. Don't know how long after this incident my attention was called to it.

Asked if he knows Bennett or Ackerson as notaries public, said he knew several in 1898. Asked what a notary public is, he said he thinks it is an attorney at law, or anything of that kind.

676

*A. W. Schmale.*

Direct examination.

By Mr. BAKER:

I reside in Portland, Oregon, and am in the book and stationery business. Am acquainted with Wiley B. Allen. In the fall of 1898, he came to my place of business and asked me if I had ever used my right to take up school lands. I told him I had not. He asked me if I intended to, and I told him I had never considered the matter. He then asked me if I would do so. So I thought it over a while, and I told him that as I didn't think I would ever use it for myself I would sell it, which I did. Mr. Allen first talked it over with myself and my wife, Minnie Schmale; and then I think it was two or three weeks later that he came and told me that everything was ready to sign up, and he took us to the office of the Irwin-Hodson Company, one block from my store, where we signed all the papers, and Allen paid us \$5 each. I did not know the notary at the time, but have since learned his name was Goldsmith. We did not appear before C. W. Hodson. I have known him for the last four or five years, but didn't know him at the time.

Witness was then shown application to purchase No. 8615, and after examining signature stated: "That looks like my signature."



The notary Goldsmith was present when I signed that paper. The deed of assignment was then shown to the witness, and he identified his signature thereon; but said he did not sign that paper in the presence of C. W. Hodson, and did not acknowledge the same before C. W. Hodson.

677 My wife signed the papers at the same time. We signed the papers all at the same time—that is, at the Irwin-Hodson Company's office. We were there only once. Wiley B. Allen was present.

Witness was then shown application to purchase No. 8626, by Minnie Schmale; also the deed of assignment. He identified the signatures as those of his wife. My wife signed those papers at the same time, but she didn't sign them or acknowledge them before C. W. Hodson, Notary. Neither of us signed any notes.

Cross-examination.

By Mr. WORTHINGTON:

Don't remember what I signed. Faint recollection of signing two papers. Five or six years afterwards before any one called it to my attention. Mr. Pugh first spoke to me about it when he was out there. I knew and was told I had a right to make the application for the school land, and thought if I did not want it I could assign it to some one else. Both I and my wife understood what we were about and we were satisfied. I don't know Mr. McCusker. Papers signed by myself and wife at Irwin-Hodson Company's office. Not in their office, but in their place of business. They had a desk inside of their place of business as you go into the door, but not in the private office. They had a private office, divided by partitions in one corner, and you went into the door and got into a kind of a store where they had a stock room. They had a counter and desks there, as I remember, very close together. When I and my wife

678 were signing these papers, Mr. Allen and Mr. Goldsmith were present and nobody else. I think Mr. Hodson was in his private office. I knew him at that time by sight, but did not know his name. I could see him through a glass partition. I don't remember whether Mr. Allen went in to see Mr. Hodson, but would not be clear about it. Mr. Allen came to my store, and we went to Irwin-Hodson's store with him. Think the glass partition went up to the ceiling and the door was closed. Nothing to fix it in my mind except that it was generally closed when I went in there. Mr. Allen met me and my wife at our store and said that we would go down to his place of business. Instead of taking us to his place, or to Mr. Goldsmith's office, he took us to Mr. Hodson's place. Didn't see Goldsmith put on his notarial seal, but think he did some writing. I remember Mr. Hodson passed through there at one time during our proceedings. He didn't stop to speak to Mr. Allen.

*Joseph B. Frontaine.*

Direct examination.

By Mr. BAKER:

I am a cattle broker. Have resided in San Francisco for about a year and a half. Prior to that time I lived in Arizona, and prior to that time at Gilroy, California.

I have known Schneider for thirty odd years, and Hyde nearly the same time. I worked for them at Mount Diablo and at the Orestimba Ranch. Employed by Hyde down to some time in 1901.

Had some conversation with Schneider about school lands  
679 from time to time. Might have been from 1895 up to the time I quit there. To the best of my recollection in 1897, it might have been in 1898, Schneider approached me and asked if I would care to take up some land. I was indifferent about it. He gave me some papers to sign up in the office, and I made application.

He told me the benefits that would be derived from it, that in making this application if I furnished half the money I could have half the profits derived from the manipulation of the lands. I did not furnish half the money. I signed two papers and got two other applications, my wife and a Mr. J. Myers, of San Francisco. I told Myers about it, and he said "all right"; and I took him down to Tricon, the Notary, and he signed the applications before Tricon, just as I had done. Think Myers signed two—might have been three—papers. I spoke to Hyde about my own application. He repeated what Schneider said, that those who furnished half the money would get half the profits; and those who did not had to depend on what he realized out of it. It was left entirely with him as to the benefits to be derived from those applications on those lines. Of course I did not expect to do the work for nothing, and although there was no fixed remuneration at the time, I made a demand for compensation, and was paid \$20 for the Myers application. I saw Schneider first, and then I saw Hyde. The conversation with Schneider was in reference to what he was to allow for those applications. He said that he usually paid \$5, and I told him that was not enough, and he referred me to Mr. Hyde. I saw Hyde about 30  
seconds afterwards. The same conversation occurred with

680 Mr. Hyde, and he thought I was demanding too much, and

I did not. So, without quibbling a bit, he paid me. Hyde repeated what Schneider said, that they had been usually giving \$5.

I moved to Tucson in August, 1901. Saw Schneider there. It was sometime after he had been there that he spoke to me about these land deals, in a general conversation. He felt business was dull, and the country was dry, and said he felt he had not been treated right. I told him he had been through droughts before, and told him I guessed he could stand it. He intimated that he was awfully bitter. I could plainly see he was going to harm someone, and begged him not to do it. He still insisted he was going to expose conditions in regard to those land matters, and I tried to reason with

him, and he still insisted on it. I still tried to bring him to his senses, and I could not do anything with him, and I dropped the conversation.

After this first conversation Schneider informed me that he had consulted with Zabriskie in regard to the manipulation of the land in California and elsewhere. He told me that Zabriskie had taken the matter up with the authorities at Washington—that is, the information he had in regard to the manipulation of the lands; that it had not been according to the law. Various parties he had induced to make applications. That Mr. Hyde had procured land illegally. He said that in some they were procured in a manner that he procured mine, and in others he claimed some of them were  
681 dummies. He named Elizabeth Dimond and Jennie P. Blair.

Said he was to meet Holsinger and a couple of other Government agents; and said he was going to divulge the condition of things. I met Holsinger in Tucson about the fall of 1902 or spring of 1903. Saw Walter Slack at Tucson somewhere about that time. Some time after Slack had been there, Schneider told me that Slack had been out there and asked him if he was going to make any talk in regard to the manipulation of the lands. He intimated Slack wanted to see where he stood in the matter; but Schneider had not committed himself one way or the other.

I never saw Dimond at Tucson in and around the time Slack came down there. I believe after Slack came down, Schneider informed me that Dimond was coming down there to see him. After Mr. Dimond had been down there, Schneider told me he had been there, as Schneider put it, representing Hyde, in reference to what Schneider had been divulging in regard to the land matters. He did not commit himself as to what he was going to do.

Schneider told me that he and Dimond had a conversation one evening. That is all I know. Schneider told me that Hereford & Hazard were representing Hyde, and that whatever dealings he was to have with Hyde would be done through them.

Schneider told me that Burns, the Special Agent, had been there, but at that time I had very little conversation with Schneider. At that time we had separated. I left Tucson in July, 1903. I was in

San Francisco in April, 1903, after I had these conversations  
682 with Schneider. About August, 1903, when I was in San

Francisco, I saw Hyde. I had received a telegram that my wife was ill. After she got well, of my own solicitation, I went to see Hyde and told him the condition about Schneider. I asked Hyde if there was any possibility that the matter that Schneider involved himself in could be choked off. In other words, was it likely to be serious. Hyde said he didn't know whether it would or not. I told him Schneider's condition. I told him about Schneider being financially involved, and that we were about to wind up our business, and if he could not get Schneider a position. Hyde first said the case had gone so far he didn't know what could be done. In the meantime, if anything could be done to help Schneider, it would have to be through Hereford and Hazard. I suggested sending a telegram to Schneider to keep his mouth shut, and, between us, we

wrote out the telegram. Instead of sending it to Schneider, I sent it to Hereford & Hazard, telling them to tell Schneider to keep still, not to talk. I wrote the telegram and signed my name to it. I took it and sent it. As near as I can remember, the telegram read, "Keep still. Talk to no one. Pay attention to no one."

After this, I returned to Tucson and saw Schneider and told him of my talk with Hyde. He was pretty dumb. I believe he went to see Hereford & Hazard. I made a trip up to Florence for stock, and was gone some time. When I come back I went to his house and asked for him. His wife said he had gone away, she didn't know where. I made inquiries around and was told he had gone to Mexico. He was away for a couple of months. He said  
683 he had been to Mexico. That he had gone down there to avoid being further interviewed. Said people had called on him while he was down there, about it. Said Hereford & Hazard advised him to go. Didn't say anything about his expenses.

Cross-examination.

By Mr. WORTHINGTON:

I have no means of fixing the date when I made application for the school lands. Think it was in 1897 or 1898. Might have been 1895 or 1893. One time Mr. Hyde was away and I asked Miss Farwell about my application. She told me she was under the impression it had not been perfected. The reason I asked was, I wanted to take up some lands with some springs on them, in Arizona, if I had not lost my right. That is all I recollect about my application.

My wife did not pay anything; neither did Mr. Myers, on the lands they took up. My wife's application was the same as mine; so far as I know, nothing --- done about perfecting it. Myers lived in San Francisco, couple of blocks from Hyde's office. Don't know what took place between Hyde and Myers.

Cross-examination.

By Mr. CAMPBELL:

I was working for Hyde on different ranches from time to time. I first went to work for Hyde, I think in the fall of 1896. I came back and forth. First sold horses on commission. Got horses from him, and worked on the ranch under his different foremen from time to time.

684 Schneider was Vice-President and General Manager of the ranches. While I was there on the ranch, Schneider, most of the time, was at the corrals on Coyote Creek, and at other times he was at the Orestimba, another camp. Schneider had charge of the Coyote, the Orestimba, the Oak Flat, and the Hyde ranch at Mount Diablo; and a ranch up the river called the Tuley Ranch. The Hyde ranch had about 3400 acres in it; the Orestimba about a hundred thousand acres, the Oak Flat about 14,000 and the Tuley about a hundred acres.

"Q. For how many years did you know Mr. Schneider to have

been the General Superintendent of those ranches? A. Up to that time—at that time when I first went up there for, well, nearly, about eighteen or nineteen years. That is, dating from the time he went on the ranches until 1893.”

The bulk of the time he was on the ranches. He made visits from one ranch to another. They were cattle and horse ranches. They fed stock at the Tuley ranch, and raised corn and alfalfa.

“Q. And during the greatest bulk of the time, during the time from 1893 down to the time that Mr. Schneider went to Arizona, you knew that he was connected with these ranches and was given the bulk of his time to the management of them? A. Yes, sir.”

I never considered that Schneider was a clerk in the office of Hyde in San Francisco. I understood Hyde was a land lawyer and  
685 a dealer of land, and at the head of those different cattle companies. I knew where his office was in San Francisco. Occasionally saw Schneider there. He would drop into the office when he passed through San Francisco. I have been there with him myself when he went there to see Hyde to settle ranch accounts and to settle some accounts for me.

I am pretty positive that it must have been that Schneider continued to be occupied with the ranches, to my knowledge down to the latter part of 1901 or the beginning of 1902—up to the time he went to Tucson to live.

I only took Mr. Myers to Mr. Hyde's office once. When he signed the papers, I took him before Mr. Tricon and brought the papers back to Hyde. Don't know whether Hyde paid Myers any money or not. Could not say whether Myers paid Hyde any money.

When I first spoke to Myers about taking up this land, I outlined the proposition as given to me by Hyde. Myers listened, seemed indifferent. I told him to go down and see Hyde and that he would make whatever arrangements were right and proper.

Part of the time Schneider's family lived at the Hyde ranch at Cornwall and part of the time in Oakland. In 1898 Mr. Schneider certainly was engaged in this ranch business, as I have narrated it here, and more active in that year than in any of the others I know of. They bought more cattle that year.

When I signed the papers I went before a notary, and they were filled up all straight so far as the notary work was concerned  
686 and my wife's, too. The same way with Myers' case.

I went before the notary at least twice. I know I had to go back a second time.

*J. J. De Lury.*

Direct examination.

By MR. BAKER:

In 1898, and now, in cigar and confectionery business in Portland, Oregon.

Know Wiley B. Allen. Asked me if I had used my right for school lands, and if I intended to. I told him no. He said if I didn't intend to use it he could give me five dollars for my rights,

and any relatives or friends that I knew of. This was some time in the fall of 1898. That afternoon I spoke to four or five different ones. Spoke to my brother-in-law, George Zeller, his wife, Mary Zeller, and his cousin, Mary B. Zeller, and McMurray, a young fellow who sold peanuts there.

Mr. Allen told me to get them together and he would have the notary come and sign the applications. The next afternoon the notary came into my store and we signed the applications for the lands. We heard nothing more about it, I think, for perhaps a week or ten days, and then Mr. Allen came around and told me that whenever I would get those people together he would have the papers all right and for us to come up to the store and sign them, and get our money. That afternoon I got them together, and we went up to Mr. Allen's. His place was only about two doors from mine. We all went there and signed the applications—I  
687 suppose they were.

I only appeared before a notary once, and my wife went once. Miss M. B. Zeller, George Zeller, Mary Zeller, myself, and my wife, all went into Mr. Allen's office. There was no notary there. We had some talk with what I supposed was a notary over the telephone. Allen called up somebody on the phone and each one of us answered to our names over the phone, and I supposed it was a notary. I don't know what Joseph McMurray did. He is dead.

We got five dollars apiece. We went before Goldsmith, the notary. George Zeller, Mary Zeller, Miss Zeller, my wife, went before Goldsmith. He came to my store. We did not read the papers and did not pay any money, and did not sign any notes.

At this point counsel for the Government called attention to and had read into the record the numbers of the applications to purchase of the persons whose names were given by this witness, and a statement showing whether the lands applied for were described in the indictment or in the bill of particulars, as follows:

No. 8624; Applicant, Joseph McMurray. Land in count 1 of the indictment.

No. 8617; Applicant Etta De Lury. Land in the bill of particulars.

No. 8625; Applicant George Zeller. Land in count 1 of the indictment.

No. 8623; Applicant Mary Zeller. Land in count 7 of the indictment.

688 No. 8627; Applicant M. B. Zeller. Land in bill of particulars.

No. 8628; Applicant J. J. De Lury. Land in bill of particulars.

Cross-examination.

By MR. WORTHINGTON:

First the people were at my store, and Mr. Goldsmith, the notary, came there and took their affidavits. Signed the applications at my store. The notary took our acknowledgments. Just a piece of

paper shoved out to us for our signature. Had some printed matter on it. Don't remember what it was. Didn't pay any attention to whether the blanks had been filled out.

A week or ten days afterwards, went down to Allen's office, and he called up the notary over the phone. Mr. Allen would call up the phone, and each of us would go there, and the man would say, "Is that you, Mr. De Lury?" and I would say, "Yes." Each one went to the phone. Could not recognize the man's voice over the phone.

I knew Mr. Hodson. He was a member of a firm there. I know Mr. Goldsmith now. Have known him casually for a number of years. Hodson's place was right next door to Allen's. We were three doors apart—Mr. Allen, Mr. Hodson and myself, in the same block. Can't state whether the blanks in the application were filled up or not when I signed it. Won't say whether the acknowledgment was taken on the 12th of August, 1898, but it was some time in August. The signatures are genuine. Presume date in the assign-

ment, 9th of September, is correct. Somewhere around there.

689 Did not know Charles R. Frazier, notary, at the time, but know him now. Can't tell whether he was the man we talked to over the phone. We knew we were disposing of our right to school lands, and we were willing to sell them at five dollars. We understood we were transferring it to somebody else.

Redirect examination.

By Mr. BAKER:

Mr. Allen only called up one person on the phone while we were there. Didn't know who the notary was that Mr. Allen called up. Did not appear before Frazier to acknowledge a paper, and never witnessed a paper that was acknowledged before Mr. Spencer.

Recross-examination.

By Mr. WORTHINGTON:

Frazier and Spencer still in Portland, in good health.

*Milton York.*

Direct examination.

By Mr. BAKER:

I live in Portland, Oregon. My occupation is confectioner. I knew Wiley B. Allen.

In 1898, I think, my next door neighbor asked me if I had ever used my right to take up land. I told him that I had not and that

690 I did not expect to use it. He said that Mr. Allen was buying the rights, and he wanted to know if I would dispose of mine. I told him I did not know, but that I never expected to use them. So Mr. Allen approached me and offered me \$5 for my rights, and I relinquished them to him. I went to his office and signed a paper, as I supposed, relinquishing my rights. One

paper is all I signed, to my knowledge. I did not go before a notary. No one was present at the time but Mr. Allen.

Witness was here shown the papers in application to purchase No. 8604, for land described in the bill of particulars, and he identified the signature thereon as his own. He further stated: I know C. W. Hodson, but I did not appear before him to swear to that paper. My wife's name is Lillian York. She never appeared with me at any time to acknowledge any paper, and I don't know of her ever appearing before a notary.

Witness was then shown the deed of assignment in the case and as to the signatures thereon he testified as follows:

That is my name, but that is not my signature. I don't know William L. Pond nor Richard H. Connor. I did not sign that paper in their presence. Looking at the name of Mrs. M. York on the paper, I don't think that is my wife's signature. I don't know A. C. Spencer. I never appeared before him to acknowledge that paper. Mr. Allen paid me \$5; I didn't pay any money for the land and I didn't execute any notes.

Cross-examination.

By Mr. WORTHINGTON:

691 The first person I talked to about this matter was Mr. Pugh, when he was out in Oregon investigating. Never had occasion to speak to anybody before then. I signed the application in Allen's office. Nobody else there. Did not read the paper that I signed. My recollection is that I signed my name twice to that paper. Went there prepared to sign any papers that were necessary.

I knew Hodson then. Not very well. His place of business across from Allen's.

I don't think the signature to this second paper—deed—looks like mine. The "M" is different. The little curlicue on the "M" don't look like mine. Would not suspect it was not mine, under ordinary circumstances. The signature on this deed looks heavier than my wife's. Looks a good deal like her handwriting. But I would not take it for her handwriting.

Allen's standing and position in Portland at the time of this transaction good, so far as I knew. Considered a prominent business man.

Fix the date of signing these papers by the time I was in business more than anything else. In business in the neighborhood of ten years. Can't tell the years during which I was in business. Could not tell whether he sold out his business in 1901 or 1902 or 1903. Could not tell what year he began business.



*Mina Boskowitz.*

Direct examination.

By Mr. BAKER:

At present a stenographer, and reside now in Portland, 692 Oregon. In 1898 was a school teacher and resided in La Grange, three hundred miles from Portland. I was in Portland in 1898.

My uncle, Jacob Bloch, asked me and his sisters if we wanted to make five dollars by signing some papers relative to lands. Mr. Bloch, his sister Bertha and I met one afternoon and went down to an office, and I signed the paper, perhaps more than one. I received the five dollars. I think, from the gentleman in the office. That is all I remember about it. Didn't read the papers over, and didn't make an affidavit. Don't remember who the gentleman was. Don't remember going before a notary. Her signature appears twice on the application 8648. Identified the signature on the deed.

The papers in No. 8648 (in the bill of particulars) were then shown to the witness and upon looking at the application to purchase she stated that her signature appeared thereon in two places; that she didn't know Charles E. Bennett, and does not remember ever making oath to any paper except her testimony in this case. She then examined the deed of assignment and stated that her signature appears thereon. My uncle, Mr. Block, and my aunt, Miss Block, were present when I signed the deed.

I don't know Joost H. Schneider. I don't know any man by the name of Eckerson. I don't remember acknowledging that deed before Eckerson or anybody else. In fact, I didn't do so.

I was in Portland three weeks and a few days over. Went home 693 on the 8th or 9th of September, or about that time, to begin my term of school, which began on September 12th. Was not in Portland on October 10, 1898, the date on the deed. I was at La Grange. The application is dated August 15, 1898. Only signed papers at one time.

Witness was then shown application to purchase No. 8636 by Bertha Block (land in bill of particulars), and she identified the signature of her aunt Bertha Block on both the application and the deed of assignment. Said the papers were signed at the same time she signed here; and that Bertha Block is now living in Portland.

Cross-examination.

By Mr. WORTHINGTON:

My uncle is living. He is in Seattle, Washington. I was a stranger in Portland, don't recollect what office I went to to sign the papers.

A year ago last October, I made a statement in my office in Portland to an agent of the Government. It was written down and sworn to. Don't remember the gentleman's name; but one was named Mitchell. I have been shown that paper ever since I came

here on Monday. I read it. When I made that statement in October a year ago, it was the first time this matter was brought to my attention. I had not given it any particular consideration.

Cannot tell the street where the signing of the papers happened; nor the names on or about the doors leading to the office. Could not tell what floor the office is on, or anything about it. My aunt went there to sign the papers, just as I did. That is all I know about it.

Don't recollect her sitting down and signing the papers.

694 I am only answering general particulars, as I remember.

It happened ten years ago. Can't say whether I was introduced to two persons or not.

I knew I was going there to sell my school rights for five dollars. I thought it was a slight transaction. Did not think it was of great importance. Not clear whether the five dollars was paid me there or afterwards. That is just like the rest, as near as I can remember.

Redirect examination.

By Mr. BAKER:

Did not give any promissory notes.

Recross-examination (continued).

By Mr. WORTHINGTON:

Being asked how many times she signed her name, witness says, "I cannot dissociate my answer from having seen these papers—evidently three times." These papers were shown to me when I made my sworn statement in Portland, a year ago.

*Edward Long.*

Direct examination.

By Mr. BAKER:

Piano tuner in 1898; same occupation now. Reside in Portland. Worked for Wiley B. Allen in 1898.

About the middle of August, 1898, Wiley asked me if my wife and I had ever *executed* our right to take up school lands. I told him no. He said we could sell them. Could sell them for five dollars. In the afternoon, my wife and I went to his private office. He brought the papers in. I picked them up and looked at them, and he said it was not necessary to read them. "You can trust the matter to me; I have been sworn in as a notary public, and it is all right." He picked up a telephone and called up a party, and says, "Mr. Long is here, ready to sign the papers." I went to the phone, and a man on the other end asked if I was Long; asked if I solemnly swore in the presence of Wiley B. Allen that I relinquished my right to certain Government lands, etc. Mrs. Long went to the phone in the same way.

It has been a good while ago. So far as I am able to remember, I think I only signed one paper; but possibly two. Whatever my signature is here certainly would be right. My wife signed as many

papers as I did. All the papers we signed were signed at one time in Wiley B. Allen's office on that day. The transaction was done at one time in his office.

Don't know who I was talking to over the phone. Don't know Goldsmith or Spencer. Didn't execute any notes or put up any money. Neither did my wife. We received five dollars each from Wiley B. Allen.

G. A. Heidenger was a piano salesman in Allen's store.

C. Martin (one of the witnesses) bookkeeper in Wiley B. Allen's store. Does not seem to me as though they were present. I don't remember seeing them in the office there.

John Goode and G. W. Harrington live in Portland. John Goode, G. W. Harrington, H. C. Moore, L. K. Wilson and 696 William Locus, all live in Portland. I know them. Witness gives their various businesses. These last-named people are not connected with the Long applications.

The Long applications were then referred to as follows:

No. 8607; Applicant, Mrs. Long. In counts 9 & 15 of the indictment.

No. 8615; Applicant, Edward Long. In the bill of particulars.

Cross-examination.

By Mr. WORTHINGTON:

Been in the piano tuning business for eleven or twelve years. Cannot tell within a year when I began.

In 1903 or 1904, Pugh called on me in Portland. I made a statement and swore to it. I was informed that Mr. Pugh was a Government officer and had a right to demand the statement. That made an impression on my mind.

I didn't take any note of it; and so I didn't think so much about it. There was a gentleman with him, but I don't know who he was. Mr. Pugh swore me to the statement. He did not say he actually demanded it, but said: You can take your time about it, but ultimately, in the end, it is better for you to make a statement. He wanted the facts in the case. I then told him I was perfectly willing to state all I knew about it. I don't know exactly whether he said it would be better for me to make a statement, but it was something

697 like that. It would be better if I knew anything about it to come out and make a statement of the facts: He did not give me to understand that I might have some trouble about the matter if I did not. I don't know exactly what he meant; only that perhaps it would shorten up the time a little, and would save him calling again. So I voluntarily told him about it, just the same as I have made the statement now. Mr. Neuhausen showed me my statement since I came here.

*Louis E. Judson.*

Direct examination.

By Mr. BAKER:

I reside in Salem, Oregon, and am by occupation a farmer. Resided in the same place in 1898. Am acquainted with George W. Davis.

About ten years ago Davis called at my house one evening when we all happened to be at home; he and his wife and his two youngest daughters, and I think his oldest daughter, but I am not certain about that. The same evening his sister-in-law, Mrs. Botsford and her daughter were there, and during the evening he brought up the subject of taking up public lands, and also produced the papers and requested us who were there that had not taken such lands to take school lands. He brought the papers out for us to sign for the application and also for the transfer to other parties that I did not know.

My Mother's name is Mrs. Sarah A. Judson. She and Mrs. Botsford, Anna Judson and Effie Judson signed for land, and  
698 also their transfer, and Davis paid them a dollar apiece for it. R. T. Judson did not sign at that time. He might have done so at some other time. R. T. Judson is dead. I didn't see the papers myself, but Davis said they were transfers or applications for land and transfers to some other parties. Besides those I have named, my father, myself and brother were present. My brother and I did not sign. Davis requested us to do so but we refused. Davis stated who he was getting the land for, but they were parties unknown to me and I don't remember the names. I don't remember anything being said about the parties signing to get land for themselves. No notes were signed by any of the parties.

(The papers in these cases were checked up in the testimony of George W. Davis, as to whether they belonged in the indictment or bill of particulars.)

Cross-examination:

About a year and a half ago, I first made a statement of the matter to two gentlemen from the Department. Don't remember the names. Statement taken down, and I swore to it. The first time I attempted to recall what happened.

I am twenty-nine now; was about nineteen when that happened. I was over eighteen, and knew I had a right to make an application. All these people signed at the same time at our place, which is just in the suburbs out of Salem. Davis superintended the signing of  
the papers. They each sat down at the table in turn. I un-  
699 derstood they were signing papers necessary to transfer their school rights, but I didn't pay any attention to see what they were signing. I didn't go up and look at the papers.

Counsel for the defendants here called upon the counsel for the Government to produce the statement which the witness had testi-

fied he had made to the Department. Counsel for the Government accordingly produced it, and upon examination of it, it was agreed that there was nothing said about the parties who made application for land not having signed notes.

Redirect examination.

By Mr. BAKER:

Nothing was said about signing promissory notes. Davis showed the papers, but I didn't read them. Davis paid a dollar apiece in coin.

*V. P. Conklin.*

Direct examination.

By Mr. BAKER:

Clerk in the Southern Pacific Company. Reside in Portland, Oregon; also in 1898. Acquainted with Thomas McCusker.

In 1898—don't remember the month—McCusker came to me, and asked me if I would not make application for school lands and transfer same to him or some party that he might mention.  
700 I agreed, and he brought the papers and I signed them, and a short time afterwards he brought me a deed conveying the land to Flora M. Sherman.

I called my wife downtown, and went to a notary by the name of Bennett and signed the deed. McCusker gave me five dollars. That is all I had to do with it. Don't remember signing any notes. Went before a notary once, to my recollection. My wife was present. Cannot remember of acknowledging any paper before Sutherland.

Cross-examination.

By Mr. WORTHINGTON:

I signed the application and deed at two different times. I was in my office when I signed this application twice. McCusker brought them to me, and I signed them at my desk. McCusker was the soliciting freight agent, and he brought the papers in. Application is dated August 11th. The deed is dated August 25th. Nothing in that interval of time which is inconsistent with my recollection. Acknowledged this deed before a notary named Bennett. Didn't know him at the time. Went to his office with Mr. McCusker. Myself and wife went before him.

*R. P. Sibley.*

Direct examination.

By Mr. BAKER:

Clerk, Southern Pacific Railway. Resided in Portland, Oregon, in 1898, and reside there now.

One day, about the noon hour, Thomas McCusker, whom  
701 I know, came in and handed me a form and asked me if I knew I had a right to make application for land, and I said

no. He said, "You have got a right. Here is a form that I want you to accept from me as an accommodation. Take it to a notary." I told him I did not want to purchase any land. He said, "You have a right to purchase lands or sell your right." I asked him what there was in it, and he said five dollars. He said it was right and legal for me to sign it. I said, "Give me the form and I will go out and have it executed and bring it back to you," which I did, and he gave me five dollars.

I have no recollection of signing but one paper. The papers, whatever they are, show. I don't recollect at all about it. Went before the notary once that I recollect. Could not tell now who he was. Been ten years ago. Went before one notary with regard to my application. Same thing occurred with my wife; same transaction.

A day or two after I signed my papers, McCusker came to me and said my wife had a right, and that there was five dollars in it for her, and I said all right. I had her come over at noon. McCusker gave me the proper form, and I went with my wife to the notary. I am pretty sure I signed the same paper with her, but she didn't sign the paper with me. I appeared before a notary. Could not say whether it was Roundtree or not. Didn't read the paper. Don't know the contents of it. I did know S. B. Riggen. Must have known him in 1898. Would not swear that it was Riggen that I appeared before. After that transaction was done, thought no more about it.

702 I went before the notary twice—once for myself and once for my wife. It was not the same notary. I made no promissory notes. I paid no money for the lands. Am satisfied my wife paid none. My wife got five dollars from Mr. McCusker.

Cross-examination.

By Mr. WORTHINGTON:

In the neighborhood of five years ago—that is my best recollection—made a statement to Mr. Pugh. Can't remember how that statement was taken down, although it was only five years ago. It was taken down in either pen or pencil, and I signed it. Don't remember how he took it. Expect it was taken in my office. I can't tell how long afterwards the typewritten statement was presented to me. That has been five years ago. Could not say whether I was sworn to the statement. Can't say whether I did or did not go before Mr. Roundtree in this transaction. I recognize my signature there. My genuine signature appears on the application. I went before a notary and signed it. Roundtree must have been the notary. Can't recollect positively. Can't tell whether I went before Roundtree to acknowledge the papers. My signature appears on the deed. Says this is Mrs. Sibley's signature. I knew Mr. Riggen. I would not swear to it. I have no recollection of going before him, but then that is my signature, and that shows for itself; and I know him. I won't say that I didn't go before him. My wife's genuine signature on the application. Could not say whether she went before Roundtree. Her genuine signature is on the

703

deed. Can't say whether she went before Rigger. Recollect very clearly going before a notary and acknowledged that signature. That is hers and that is mine. It seems by these papers that she must have gone with me when I acknowledged the paper, but I have no recollection of it. I know she went before a notary in reference to her own application, but I have no recollection at all of her going with me about my application. I'll be hanged if I know how it happened now.

*Mrs. Lillian York.*

Direct examination.

By Mr. BAKER:

Milton York is my husband. I don't know anyone by the name of William L. Pond, nor Richard H. Connor. I don't know A. C. Spencer, Notary Public; and never appeared before him to acknowledge any deed. I always sign my name Mrs. Lillian York. That has always been my habit. I never signed my name Mrs. M. York.

Witness was then shown papers in application to purchase No. 8604 and her attention was called to the deed of assignment and she was asked to state whether the signature under Milton York was her signature; and she answered, "No, sir."

704 Cross-examination.

By Mr. WORTHINGTON:

I don't remember anything about myself or my husband signing any papers in connection with this land transaction. All I know is that they asked him to sell his right. He mentioned that to me, and I only know what I heard from him. This "Mrs. M. York" does not resemble my handwriting at all. It doesn't at all look like the way I write my name. Mr. Worthington, counsel for the defendant Hyde, then requested the witness to write the name "Mrs. M. York;" and she did so.

Mr. WORTHINGTON: I will show that to the jury. It is perfectly apparent that there is no resemblance between the two handwritings.

I did quite a little writing. I think my husband is quite familiar with my signature. He has frequently seen me write my name, and certainly has received letters from me.

*Fred Wittenstraun.*

Direct examination.

By Mr. BAKER:

Quarryman, reside at Rocca, Oregon. Know George W. Davis.

Davis asked me, if I didn't want to use my school right, if I would not give it to him, so I signed the application. He paid me a

705 dollar. Must have been two papers, as near as I can recollect. I signed them down at Davis's quarry, in Lincoln county.

Think the papers were in blank. Did not know Davis was a notary. Don't know whether he swore me.

Identifies signature on application 8703. Might have been sworn in. Not positive. The application was blank, as near as I can remember, when I signed it. The deed was blank, too. I know O. G. Dollaha. Don't know whether he was present when I signed. Didn't sign any promissory notes I was working for Davis at the time.

Cross-examination.

By Mr. WORTHINGTON:

Don't remember when I first spoke about the transaction afterwards to anybody. About a year ago Hilliard Jones, from the land office, got a statement from me, and I swore to it. Mr. Newhausen showed it to me. He read it to me this morning.

I think I signed my name five times in this transaction with Davis. Memory not very good, and this happened about eight years ago. Witness repeats that 1898 is about eight years ago. Identifies his signature on the deed; and his two signatures on the application. The papers were blank when I signed them—almost certain.

I don't know what the papers were. I did not read them through. I don't know that they were not promissory notes. I just signed some blanks—signed some papers for Mr. Davis and he gave me a dollar, and that is all.

Redirect examination.

By Mr. BAKER:

I only signed papers once for Davis.

706 Recross-examination.

By Mr. WORTHINGTON:

I worked for Davis and saw him pretty nearly every day. Never had any talk with him after I signed the papers.

*E. E. Page.*

Direct examination.

By Mr. BAKER:

My occupation is that of auctioneer; and I reside in Portland, Oregon, and was residing there in 1898. I ordinarily sign my name "E. E. Page."

I do not know Joost H. Schneider. Never had any conversation with him whatever. Didn't know I had any school land rights in 1898, and I never took up any school lands in the State of Oregon.

Witness was then shown the papers in application to purchase 8573, and was asked as to the signature on the application and on the deed of assignment, and he answered as to the application that the signature is a good copy of my signature, but it is not my signa-



ture, because I was never approached in this matter and knew nothing about it, and never signed any paper of that kind. What I meant by saying it is a good copy is that if it was in our regular business it would be so similar that I could hardly tell the  
 707 difference; and having never signed any paper of this nature I know it is not my signature.

Being asked whether the signature on the deed was his, he replied, after examination: "No, I know nothing whatever regarding this paper. I never signed it." It is not my handwriting. I don't know Don Alexander nor anybody by the name of C. L. Wilson. I don't know anybody else in Portland by the name of E. E. Page. I don't know of another E. E. Page in the State of Oregon.

I write my signature a great deal—every day in the year in my business. I handle all the money of the firm and issue bills. We conduct three sales a week and sometimes five sales a week, and I collect all the money and receipt all the bills.

I was only a clerk in 1898, and was not handling the money, but I was signing some of the bills just the same. Was handling some money and signing quite a good many bills at that time. The purchaser would get an itemized bill and the bill would be receipted, and whoever checked up the bill would sign it; and that was my work at that time.

(The land described in this application is in count 2 of the indictment.)

#### Cross-examination.

By Mr. WORTHINGTON:

If those signatures had been on our bills, I would have thought they would, no doubt, have been mine.

About two or three years ago I changed my signature as  
 708 to the way I made my "E's." It is possible that, at that time,

I made the "E" just as it appears here. Would not state that I did not. I would not say that there is anything in that signature which is not just as I made mine in 1898.

I only know Mr. Alexander by having met him before I came from the coast. Prior to that time—a month ago—I did not know him at all. I am sure I never met the man before. It may be possible that I met him casually ten years ago; but never in this matter. It is possible that I might have been introduced to him in 1898 and have forgotten him.

The first time my attention was called to my signature on these papers was when Mr. Pugh called to see me about three years ago. Didn't know anything about it until then. I signed a statement. Mr. Pugh said he had been to the Land Office and that the records showed I had made application for land, and that he wanted my signature. He merely got my signature.

I didn't sign any application. As a matter of fact, Mr. Pugh may have taken down my statement and I signed it. There was some statement made out, and I signed it. I had forgotten it until you

called my attention to it—I didn't pay much attention to it—I was surprised to find I was mixed up at all in this matter.

"Q. Have you seen that statement since you came here? A. No; I believe not.

709 "Q. You say you believe not. Are you not sure that you did not? A. Yes; I did see it. I read it over this morning.

"Q. And you had forgotten a few minutes ago that you saw and read that paper? A. Well, I am not used to this kind of a proposition, and easily confused.

"Q. I am not trying to confuse you; I am trying to find out what kind of a memory you have. That is all I want to know. You saw that statement and read it this morning, and you first answered me that you had not seen any paper at all. A. Yes."

Redirect examination.

By Mr. BAKER:

Mr. Neuhausen showed me the statement this morning. I guess I was a little careless, and got the thing all mixed up. It looks like it to me. Mr. Neuhausen showed me the deed and that application. I knew I had seen them before, and I knew I had not signed them. He did not show me anything else.

*Clarence H. Ford.*

Direct examination.

By Mr. BAKER:

I reside in Portland, Oregon, and resided there in  
710 1898.

Witness was then shown papers in application to purchase 8596, and he identified his signature on the application and on the assignment.

I know W. N. Gatens and Clarence H. Jones, and signed the deed in their presence. I swore to the application to purchase and acknowledged the deed of assignment before Clarence H. Jones, Notary. I was before the notary only once. He paid me \$5. I didn't sign any promissory notes. I do not know T. F. Ford, and didn't know anybody by that name in 1898. When I signed the papers, Jones the notary was there, and it seems to me that a man by the name of Boynton, H. O. Boynton, was there, and a man by the name of W. D. Kline also. I have a brother whose name is F. E.—Frank E. Ford.

Witness was then handed the papers in application 8597 in the name of T. F. Ford, and was asked if the signature resembled his brother's handwriting and he answered: It does not.

(The two Ford applications describe land in count 18 of the indictment.)

Cross-examination.

By Mr. WORTHINGTON:

Lived in Portland 15 years. My brother's name is F. E. Ford, not T. F., or F. S.

711

*Edward L. Aiken.*

Direct examination.

By Mr. BAKER:

I reside in Portland, Oregon, and resided there in 1898. Am in the real estate business.

In 1898 Thomas McCusker came to me and said he would give me a chance to make \$5 by making application for school lands and transferring the same to some other parties who were getting a lot of land by soliciting friends or acquaintances or anyone who was willing to sell their school land rights. That it was necessary to make application for the lands, and when the deed was signed we would get \$5 apiece. He brought the application to me, and I signed it, and a day or two afterwards he said it had been accepted, and the deed was ready for me to sign; and I did so. I can't swear that I went before a notary when I signed the application. I did not go to a notary, but once.

My wife took the same means to get \$5 that I did. They talked with me, and I told her, and when the time came for her to sign the paper she went with me. I am sure I went before a notary but once, and she was with me when we signed the deeds. She received \$5. We gave no notes, and paid no money on the land. The notary was Charles E. Bennett. He was a friend of mine, and is now dead.

(These two cases involve lands in count 1 of the indictment.)

712 Cross-examination.

By Mr. WORTHINGTON:

Bennett was real estate man, as well as notary. He was well known there—in good standing. Three or four years ago first time I made a statement. Made it to Pugh. Whoever I made the statement to came to me with McCusker. Think it was Mr. Pugh. Would not be sure. Didn't make a statement. Simply talked with him. They asked me questions.

*H. F. Bartels.*

Direct examination.

By Mr. BAKER:

I reside in Portland, Oregon, and resided there in 1898. My occupation is fire insurance. I knew I. Goldsmith in 1898. Was well acquainted with him. I was clerking in an office and Goldsmith was there. It was Henry Ackermann's office. I knew Wiley B. Allen. Ackermann's business was fire insurance.

I did not, at any time, have any conversation with anybody in regard to school land rights or in regard to my school land rights. I did not know in 1898 that I had school land rights.

Witness was then shown application to purchase 8655 and was asked whether his signature appeared thereon, and he answered that it did, but that he had no knowledge of signing the paper, and that he had no knowledge of ever swearing to it before Mr. Goldsmith. He was then shown deed of assignment and identified his signature thereto and stated that he did not remember having signed it; that he did not remember anything about it.

I know Eugene D. White (one of the witnesses to the deed), but didn't know him in 1898. First knew him three or four years ago. He was then in the fire insurance business. I signed a good many papers probably in 1898 for Mr. Ackermann. Don't know who prepared the papers. I suppose I witnessed them. Did not sign many papers that I was interested in.

(This application embraces land in third count of the indictment.)

Cross-examination.

By Mr. WORTHINGTON:

They are my two signatures on application 8655. Take them for my signatures anywhere. My signature to the deed. I don't remember putting them there.

Don't remember when my attention was first called to these papers. Never saw them before. Never saw them until I was shown them in the court room just now. This is the first I have seen of them, when I got on the witness stand.

I know Mr. Neuhausen casually, and had talked with him about my testimony. I don't remember whether he showed me any papers.

The foregoing testimony of this witness was given on April 29th, 1908. On May 4, following, he was recalled and further examined by Mr. Baker, as follows:

714 "Q. Is there any explanation you desire to make in regard to your testimony given here the other day?

"A. I got sick towards the last of the testimony and I wish to correct some of the testimony, the last part of it, in regard to certain papers."

I did see the papers that bore my signature; Mr. Neuhausen showed them to me; I was taken severely sick in the ante room here just after I left the stand the other day; I am subject to spells once in a while.

Cross-examination.

By Mr. WORTHINGTON:

My last spell previous to this one was about six months ago. Mr. Neuhausen showed me the papers about a couple of hours before I

went on the witness stand; he showed me some papers that I put my signature to—nothing else; I don't remember when I put my signature to those papers.

*D. D. Tennyson.*

Direct examination.

By Mr. BAKER:

Reside in San Jose, California. Claim agent. Have resided in San Jose over 30 years. • San Jose — 49½ miles from San Francisco.

Am acquainted with Hyde. Became acquainted with him in 1877.

I know the defendant Dimond. Became acquainted with him  
715 about thirty years ago, when he lived near where we did.

Never had any dealings or business transactions with him.  
Have had business relations with Hyde.

All my applications for school lands have been sent to Hyde. In 1902 or 1903, Hyde spoke to me in regard to some state lands which might be secured, and asked me if I had any friends that wished to make applications to send them in, there might be something in it and there might not. At any rate, they would be nothing out. I was to get four dollars an application to pay my expenses and notary fee. That was about all that was said. Nothing was said about applicants putting up any money; they did not put up any money. Nothing particular said about profits at that time. Simply a chance. Might be possible to make something, and might not. As I had been doing business with Hyde for a great many years, and had full confidence in him, I was satisfied that whatever turned out in the matter, if there was anything, I would be paid. I got some applications and sent them to Hyde. Received only my four dollars per application.

I would see some of my friends that I knew were qualified to make the applications—they were over 21, citizens of the United States, and so forth. I satisfied myself they had never located 640 acres of school land, and I would explain to them their right to make application; that there might possibly be something made out of it later on, but there was nothing at that time; and in the meantime

that they must not sell the lands without letting me know  
716 something about it. I would send those applications to Hyde.

The applicant would sign the two papers, the application and the power of attorney to locate and act as attorney for the applicant at the State Land Office. Mr. Hyde would mail me these applications with the descriptions, and I would have the applicants sign them. The application would come to me with a power of attorney and the description written in it, and then I would get the applicant to execute it and send it back to Hyde, and then, later on, I would get my four dollars per applicant. The power of attorney was merely a blank furnished by the State Land Office for that particular purpose, which allows anyone to appear for the applicant, file a claim, and, if the attorney sees fit, to abandon it. Couldn't tell how many applications I got in this way—perhaps 20.

Application 2155, Orin F. Wood. Recognize my signature. He was one of my friends, living in San Jose. Nearly all the applicants I secured were old pensioners, friends of mine who resided in different places, mostly in San Jose.

Where it says Post Office Address care of D. D. Tennyson, I put that on. Can't say whether it was on all of them. Wood was a man sixty years old, perhaps. I explained the application to all of them. Don't know that I read it word for word, from beginning to end. When an applicant would come in, I would say to him, "Have you ever had your 640 acres of school lands, or do you want to purchase 640 acres of school lands?" He would say, "Well, what is there in it?" I would say, "At the present time there is not any-

717 thing, but there may be hereafter. If you want to sign an application I will fix one out for you and have it filed, and if there is anything to be made out of it hereafter, well and good, both of us will make a little something out of it, and if there is not anything to be made out of it you are nothing out and I am nothing out." There was never anything mentioned as to what I was going to get out of it, or what the applicant was to get out of it, or what Hyde was to get out of it.

I didn't pay these applicants any money. Never paid them anything. There might have been two or three in the lot that wanted to borrow fifty cents to get tobacco, but that not only applies to these cases but it applies to about 400 pensioners that I have on my books. I think likely I might have paid some of them 50 cents, and some a dollar for the application. Don't know whether the applicants ever paid the state 25 cents an acre. I never asked them for it. Hyde never asked me to get it for him.

Cannot give you a list of the persons I secured. If you called them off I would be able to recognize them, and could tell you what most of them do, and where they live.

John J. Hays. Lives on Mystic Street, in San Jose. Does not do anything now. Quite an old man. Probably 73. Distributes hand bills for different merchants. I got his application for Hyde. I got all these applications in the same way; all these that I have testified to.

George A. Hill. Lives at Edenville. Part of the time he is in San Jose. Does not do much of anything lately. At one time 718 was a pretty good workman. In 1898 worked on a ranch.

William Pitman, lives on South First street, in San Jose. Shoemaker. I secured his application for Mr. Hyde, and the same applies to Mr. Hill.

Simon Turner, colored man, drives an express wagon. I secured his application and sent it to Hyde.

John Connor. Old soldier, 65 years of age. I secured all their applications and sent them to Hyde.

Wallace Edson. Lived at one time on 9 South 2 East on Section 18-19. Don't know what he is doing now. He signed an application and I sent it to Hyde.

Chester Waltz. Lived in San Jose. Laborer. I got his application and sent it to Hyde.

C. B. Bodwell. Now in a veteran's home at Yountville. Lived in San Jose at that time. Picked prunes in a prune field. I got their applications and sent them to Hyde.

James L. Crowner. Laborer. Old soldier. Lived at San Jose. Application 2151, James Crowner, introduced in evidence and Baker reads application to the Jury. I sent his application to Hyde.

I had no knowledge of the lands mentioned in these papers personally, except from descriptions. I could judge pretty well what the character of the land was. The character of the land had to be proven by other witnesses who have a knowledge of it. The testimony of the applicant as to the character of the land is not accepted by the Land Office. The applicant did not have knowledge  
719 of the character of the land in all of these cases. Some of them might have had.

I would explain to the applicants where the land was located, giving the county and township and range. Don't think the applicants would have any knowledge as to whether it was suitable for cultivation or timbered, or whether there was any adverse occupation, but if land had been surveyed over ninety days, if there was an adverse occupation, that adverse occupier would lose his rights if he had not made his application for it.

I didn't make any inquiry on behalf of these applicants.

"Q. Did or did not any of these applicants purchase the property for their own use and benefit, so far as you know? A. I told them at the time that they were purchasing it for their own use and benefit, and that they must not make any sale of it at the present time and not make any sale of it without coming to me and letting me know that everything was all right."

None of these applicants inquired of the value of the land from me. They did not take that much interest in it. I explained to them at the time they were purchasing this land for their own use and benefit; and that they must not sell it, because they could not make application and sell it immediately, without any title to it.

In my conversation with Hyde nothing was said as to any  
720 advantage to Mr. Hyde for getting these applications. Nothing was said as to what was to be done hereafter. I took those applications, thinking that there would be something made out of them, the same as buying a house and lot, or buying any other property and selling it and making a commission out of it. As a matter of fact, the applications were filed on the spur of the moment, without much studying, and I kept on filing them until one of the applicants came into the office and said a detective had been to see him to see whether or not he was really a living man and was qualified to make an application. That put me on my guard a little, and from that time on I stopped taking them, thinking it might not be all right.

The witness was then further examined and testified with respect to other persons whose applications he secured in the same manner and sent to Mr. Hyde, as follows:

Burnette Lemaire. I knew him well. Post office address R. F.

S. No. 6, San Jose. He has a little fruit orchard. 67 or 68 years old.

I know J. W. Strandberg. He resides on Township 6 south range 4 E; I think in Section 29.

I know Charles H. Yountz. He resides in San Jose. Died 2 years ago. Used to drive a buss for the Ozray House. About 65 years old.

The WITNESS: The applications are all alike. They are all just the same.

I am acquainted with John Walker. He lives in San Jose. Is a laborer and works in orchards. About 45 years old.

721 I am acquainted with Daniel McMullen. He was an old soldier, and resides in the almshouse, and sometimes when he is able he works.

I know Philip Brady. He works in the almshouse most of the time. He is quite an old man, close on to 70.

I knew A. F. Daney. His first name was Alonzo. He is dead. He had been a soldier and used to work around from place to place.

I am not sure what H. P. Benjamin does now. He is past middle age. None of these men were young. Most of them were ex-union soldiers.

Am acquainted with G. C. Campbell. Think his name should be J. C. Campbell. I know him well. He is a rancher and lives on the Allen Rock Road.

Am acquainted with S. M. Westbrook. He worked around in the orchards. Was past middle age.

Can't remember just now what was the occupation of Daniel W. Davis, but I know there was a Daniel W. Davis made an application.

George Morris was an old soldier.

I know H. C. Barnes who signed an application.

E. N. Gilbert, I can't remember. Can't remember his occupation. Sometimes some of these people would tell a friend, and bring him in and get him to sign. Gilbert signed an application. The number is 3942. That is his signature, and this is mine (indicating).

722 The papers in application No. 3928 by George Morris and application 3942 by E. N. Gilbert (lands in list C of the bill of particulars) were then offered in evidence by counsel for the Government.

Am acquainted with W. H. Wicham. He resides in San Jose. He is a cripple and cannot do anything. He draws a pension. His application, No. 3997 (land in list C of the bill of particulars) was offered in evidence.

Am acquainted with Frank Garcia. He is a laborer; a Spaniard. His application to purchase, No. 3998, was identified by the witness and offered in evidence. (Land in list C of the bill of particulars).

I know Patrick Murphy. He works around the City Hall. He is over 45.

Am acquainted with N. H. Sweatman. He was a laborer and worked in fruit orchards. Is now dead. His application No. 4002,



was identified by the witness and offered in evidence (land in bill of particulars, list C). I don't recollect that Sweatman ever signed any other papers in regard to this application.

I know James E. Tyhurst. He was a farmer. I cannot recall James E. Tyler to mind just now. Identified application to purchase No. 4004 as one obtained by the witness. I recognize my signature. That man undoubtedly appeared before me. I cannot recall to mind who he was.

(The applications of all the foregoing named persons referred to by this witness embrace lands in list C of the bill of particulars.)

723 In all the cases, after the name, appears "Care D. D. Tennyson, San Jose, California." That was because sometimes the mail sent to them would not reach them, because they had no steady address. I always knew where I could find them. Most of them were pensioners, and if I didn't see them every day or so I saw them on pay day, when they were sure to come in.

All of these applications came to me with description in, but they would have no date. The powers of attorney would match the applications. They would be pinned together.

So far as I know, Mr. Hyde has never made any returns to these people.

Hyde would send me a letter enclosing check. I have not any of them now. Never received any letters stating whether these lands had been patented, or asking that certain persons execute deeds. About the time these applications were filed this trouble immediately commenced, and from that time on everything was dropped. Nothing has been done with it. The trouble commenced less than a year after these applications were filed. I cannot call the name of a single person where I received any deed to be signed, but such a thing might have been, because I used to receive mail from Mr. Hyde on my other business every day in the year, pretty near, and I cannot single out any particular thing, because I had a great many things for a great many cases, that did not have any connection with these cases. Cannot recall that I ever received a deed to be signed.

724 Never received a dollar from a single applicant. Never received a dollar from Mr. Hyde, except the four dollars from Mr. Hyde for each case.

Jacob Norton, worked in orchards and fruit ranches. Don't remember paying any money to Mr. Norton, and he didn't pay any to me.

Cross-examination.

By Mr. WORTHINGTON:

Been engaged in the land business now about thirty years—since 1877. In my fourth term as notary public. Four years to a term. Still notary public. There was not a bit of secrecy about the transactions I had about those applications. No occasion for it, because they were all friends of mine. When I got them to sign these ap-

plications it was with the expectation that there would be a little something in it for them and for me.

I explained to them that they could take up the land if they had not already taken up 640 acres. If they had taken part of the 640, I explained that they were entitled to take enough more to make 640.

San Jose has about thirty-five thousand people—if you take in the suburbs, fifty-five thousand.

It was not publicly known that these men were making applications of this kind in this way and having somebody else put up the money. Nobody knew it but myself. These men heard about it when I told them. I would go to them; they would not come to me.

I did not enjoin a bit of secrecy upon any of these applicants.

They were scattered all around. It became publicly known  
725 soon afterwards.

Soon after some of these applications were filed, the men commenced coming to me and saying a stranger had been to see them to see what their names were, and where they lived, and whether or not they had signed the applications, to see whether they were real persons. After that, I stopped taking applications. That person who made the investigation did not come to me. That was in 1903. Cannot tell what part of the year. Soon after these things were filed.

Prior to these applications, all my state land business went to Hyde. I sent all my claims to him. I have always sent my work to him. No special arrangement about this.

When these applications came to me with descriptions of the land, I knew where the property was. It is pretty hard to floor me on anything of that kind. The descriptions were scattered. I was pretty well acquainted with what was the mountainous region and agricultural region, and I could form a pretty good idea from seeing the section and township and range what kind of land it was. I knew they were open to location from the fact that these applications were sent to me, so I informed these people they were lands that could be taken up. When these people took out the applications, I informed them if it was mountainous lands. I didn't know whether it was occupied. All Hyde told me was that the descriptions he sent me

would all be subject to applications. I understood in good  
726 faith that the lands of which he sent me descriptions were unoccupied lands, and such that these people might properly make application for. The character of the land, anyhow, must be proved by two witnesses who know about it. The applicant cannot do it. I gave the applicants to understand that the statements I made about the lands were true, and I believed them to be true.

Now, taking up one of these applications, W. S. Wickam, 3997; he signed that in my presence, and I filled up the date and the "subscribed and sworn to," and signed my name as notary, and put my seal on it; and the whole paper, as it appears now, was sent to Hyde, everything filled up just as it is now, and this applicant was a real person, and I was giving him to understand that the statements in the application were true, and then swore him. Then, next, was a

paper headed affidavit of two witnesses to accompanying application for school lands. The character of the land must be proved by two witnesses. The statement of the applicant is not accepted, and the affidavits of these witnesses were not made before me. There was another paper, approval of application to purchase state lands. That was signed by the Surveyor General, and so on. That did not pass through my hands. That was the form commonly used when the state approved it. I cannot recall whether, afterwards, a deed was sent me to be executed. If I saw the deed I could tell about it. There may have been a deed sent to me in some of these cases, and I had forgotten it, because there was a great many settlers in my county and those settlers would come to me to sign the deeds. Sometimes it was preferable to abandon the location and, by filing  
727 a power of attorney with the application the claim could be dropped, it could be abandoned, and where the certificate of purchase would be issued, it would be sent to the party to whom the power was executed; that is, the attorney named in the power of attorney.

Under the practice and custom of the state, when a deed was made out in a case in which the power of attorney was filed, this deed would be made out to the applicant, but sent to the attorney, so the title would be put in the applicant, and the paper which puts the title in him would be sent to his attorney. Now, below some of these applications, there is put below the word "Applicant," the words, "Care of D. D. Tennyson." A good many of these applicants did not have a regular business address, and if the mail carrier could not find the man the mail would go back. By putting that address in my care, I would be sure to find them. They were mostly pensioners, and I would see them paid; so they would be sure to get the papers. I put that on in every case I file today. Have done it for the last number of years. Simply following out my general custom, and, even now, I have a rubber stamp to stamp it on. Very often it is done instead of getting a power of attorney. If, under the application, there is put "Care of so and so, attorney," the same thing is accomplished as if I had a power of attorney.

I sent Hyde the applications. Of course, I cannot tell what, if any communication he ever had directly with any of these appli-  
728 cants. For the last 25 years in cases similar to these I took for Hyde, I have been sending Hyde applications of my own, and I sent them to him in the same manner.

My present term as a notary began sometime this February. I was a witness in San Francisco, some three or four years ago, and testified there just as I have today. I was a notary then. I served out my term as a notary and have been re-appointed. Never been prosecuted or threatened with prosecution.

There is a regular schedule of charges in California, but the notaries don't pay any attention to it. It is all the way from fifty cents to a dollar. The legal charge would be a dollar, I think, but in this case there were two documents, you see. When Mr. Hyde sent me my four dollars in each case, he sent it by check, payable to my order, and I would put it in the bank.

Not a single one of the men I dealt with ever made any contract or agreement to sell their land or rights. There was nothing which took place between me and them which prevented them, when they received their conveyances from the state, from doing what they pleased with the lands. They all relied on me to attend to the work. They didn't know Hyde.

I have no personal knowledge what came out of the business; whether there was a profit or a loss. So far as I know, Mr. Hyde never knew what I said to, or what I did with these men. I simply sent him the applications. These men furnished no money. There

729 was nothing said about Hyde putting up the money; nothing said about it at all. I cautioned these applicants that they must not make application for land, and then immediately make a contract for selling it; that they must not do anything towards giving a title or selling it until everything was all right, and to come in and see me first. We could not get a certificate of purchase in California until the application had been on file three months.

#### Cross-examination.

By Mr. CAMPBELL:

I don't know of any rule or regulation of the land office or law of California, that prevents a man 65 years old from making application for land—nor an old soldier—nor a colored man.

The form of that power of attorney is prescribed by the State Land Office. Without the power of attorney, they would not recognize the attorney's power to deal with the matters in the land office. An applicant make an application for a sixteenth or a thirty-sixth section—the whole of it, and when it comes before the land office there might be a conflict with a quarter section. The attorney, if he has this power of attorney, may abandon that quarter section and take a certificate of purchase for the balance. That is what the power of attorney is for.

#### Redirect examination.

By Mr. BAKER:

730 These applications I got for Hyde were gotten in the same manner that I got my own, except in my own cases Hyde did not pay me four dollars. I have sent hundreds and hundreds of applications of this kind to Hyde for clients of mine who wished to secure title to land. Certainly my clients would pay me a fee and I would pay Mr. Hyde his fee, and my clients would pay for the land. It was different in that way from Hyde's; but what I wanted you to understand was that these applications were not the only applications I have sent to Hyde, for I have sent a great many of my own.

When I sent these other applications, I would not send the twenty-five cents, or the dollar and a quarter with the application. I would not pay Mr. Hyde anything—not then. When the claims went through, then the man who bought the land would pay for it and

pay all the expenses, and pay the twenty-five cents—or the dollar and a quarter an acre, just as he saw fit. My clients, of course, would put up the twenty-five dollars, and perhaps something more, for expenses.

This is the only time I ever went and got applications like that. There was nothing, either by word or writing—that these applicants which I got in the way I have testified were to sell. They all signed these applications at my request, and trusted to me for anything that might come out of it hereafter. I did not understand Hyde was making these applicants a present of the 25 cents an acre. My understanding of it was that while there was nothing in writing, or nothing said by Hyde, that if these cases went through and he made any money out of them, that he was to pay me and to pay the claimant for his trouble, but the claimant was not to sign anything until he had a perfect right to sign it; that he could not convey a title until he had a title. I understood Mr. Hyde was to get the title for the applicant and then, if the applicant saw fit to sell, he could sell. Mr. Hyde didn't have to pay twenty-five cents an acre. He simply paid a fee for filing it. That is all. The twenty-five dollar fee, that is all he had to pay. The balance is paid whenever the claim is approved. Then they could pay the twenty-five cents an acre, or pay the dollar and a quarter, just as they saw fit. Mr. Hyde was supposed to pay it.

In the cases I had before this case, that was a different thing. That was a transaction altogether different from this. Perhaps a neighbor living on a homestead would want a forty-acre piece adjoining. He would come in, make application for that forty acres. I would send the application to Hyde, and Hyde would get the title. The man would pay the state for the land and perhaps I would pay Hyde twenty-five dollars for his trouble. If it was a large piece, I would pay him a hundred. If 640 acres, I might pay him \$150—whatever we would agree on.

My supposition of the case was that Hyde was to pay for these lands, and if there was any profits they were to be divided in some way.

Witness was then shown application to purchase No. 2305 by Jacob Norton (in list B, bill of particulars), and was asked  
732 to state whether his signature appeared thereon and he answered: "I do not see my handwriting in there." He was then asked if the writing, "care of D. D. Tennyson, San Jose," was his, and he answered: "It is not my handwriting." I cannot call to mind Jacob Norton.

#### Recross-examination.

By Mr. WORTHINGTON:

Oh, yes, I recall that sometimes I would have my clients or applicants whom I had obtained go to Hyde's office direct, instead of my preparing the papers. That was done frequently. I cannot remember Jacob Norton, but this might have been the case with him, because a great many of those cases came to me in that way—it is the custom among some of the attorneys to have those papers come in

care of somebody else. Sometimes I would have clients that were not where I was, go directly to Hyde's office, and they could do that and probably did, and I had a good many.

There were quite a number of Nortons in San Jose. I cannot just place Jacob Norton. Cannot call him to mind, because I don't think he is a pensioner. He undoubtedly lives there. There were a number of persons there I knew, named Norton. I cannot call each one to mind, but I know he is not a pensioner. All the pensioners come to me four times a year. I knew John Norton very well. Very often, when an applicant comes to make an application, the attorney loans him the money, or puts it up for him. Hardly a week passes without some man will come around and want  
733 to make an application for the land, and has no money.

"Q. I will ask you, Mr. Tennyson, if you can recall that in or about 1898, one of these men whose name was Norton in your vicinity came to you and told you he wanted to take up some land, and you told him that you had not any description, but that if he would go to Mr. Hyde he could obtain it—such a description as would suit his purpose—and make an application? A. Well, cases of that kind frequently happened."

I cannot remember particularly about Mr. Norton, but I have sent dozens and dozens of them to him for that particular purpose. They would come to me for that purpose.

It is very likely that in 1898 I sent several persons who came to me to make applications for state lands to Mr. Hyde, because I had no descriptions which could be filled in their applications, and I thought Hyde would have. I have been doing this ever since I have been acquainted with Hyde. When I would send these men to Hyde, I don't know what contract they would make with them.

*Paul L. Moses.*

Direct examination.

By Mr. BAKER:

Fruit merchant, Oakland, California; in 1898 resided in San Francisco. Between six and eight years ago, to the best of  
734 my recollection, I was living in San Francisco, and was in business there. I was a customer of Abe Stein, the barber.

Stein asked me if I would like to take up some school land. He told me every American citizen was entitled to take up school land. I told him I didn't bother much about it. He said, "There is something in it." I said it would cost me something to get out the papers. He said, "No, I am acting for Hyde. Hyde will get out all the papers, and it won't cost you a cent. You take up so many acres—I have forgotten how many, of school land, and at the time you take that school land and keep it, the scrip, or whatever it is, and some day it will be worth something to you. It won't cost you a cent. Hyde pays all the expenses." I said that looked pretty good. He said there were a number of boys in the shop doing the same thing. I told him I would do it.

About a week after I was in his shop again. He told me the papers were ready. I told him I would sign them. I signed the papers and put them in my pocket, and when I got home, I threw them into an old bureau drawer, and I left them lay there and forgot all about it. About a month or possibly two months after that, I was in Stein's shop, and he asked me if I wanted to sell the land. I said it didn't cost me anything, and asked him who wanted to buy it. He said Hyde would buy it. I told him I would sell it if I got anything out of it. He said I would get twenty or thirty dollars—something like that. I agreed to take it, and he told me to

bring my scrip down the next time I came. I brought the  
735 scrip down to the shop and he told me that in order to make the transaction legal I would have to go across the street, where there was a notary public, and we went together across the street, and I signed, and I knew I was signing it over to Hyde; but that didn't bother me, I was going to get the money. Then we came back to the shop and Stein told me that he didn't have the money, that he would get it. The next time I came down to the shop I got the money.

Went before the notary once. Signed papers twice. First time I signed papers, Stein gave them to me—the scrip—when I signed, I don't remember whether I went to the notary the first time. Might have been. Cannot tell exactly. Long time ago—whether I really went to the notary once or twice, don't remember. I am positive that when I transferred the scrip I went to the notary with Stein. Cannot remember how many papers I signed the first time. The last time I signed two or three. I did not read over the papers for the simple reason I knew I was transferring my scrip to Hyde. Didn't read them over the first time. I took everything for granted, that everything was perfectly straight and legal, and I didn't read them over. I didn't buy the land; I took it up. All I knew was that I was taking up school land. Didn't know really whether it was in Oregon or California. I didn't care, because I thought as long as I was going to take it up and it would be worth something

some day, it didn't make any difference whether it was in  
736 California or Oregon. I didn't pay anything when I took up the land. I didn't know whether anybody was in occupation on the land. Didn't know whether it was suitable for cultivation.

That is my signature on application 12,330. I went before Mr. Lyons, the notary. I heard Lyon is dead. I don't know. I signed that power of attorney. Couldn't tell how many acres I took up. Couldn't tell positively, but think it was somewhere between ten and twenty dollars that Stein paid me.

The papers in application No. 12,330 (list B, bill of particulars) were thereupon offered in evidence.

Cross-examination.

By Mr. WORTHINGTON:

Four years ago, probably, Mr. Burns, the detective, asked me about this matter. In the meantime I never gave it a thought. I



never gave it a thought until Burns got after me. I did a whole lot of thinking after that. Burns did not intimidate me, but I gave him to understand that I didn't care about getting mixed up in that way. If I knew the outcome of it, I never would have been in it the first time. I don't think more than a month could have elapsed between the time I signed the application and the time I sold the scrip. The first papers I took home and put them away and thought, some day, like stocks, they would be worth something, and I forgot about it.

Asked whether the date "3d of March 1898" just over his signature to the application was the date on which he signed the  
 737 paper, the witness answered, "Well, I stated in a previous statement here that when I signed I didn't look at dates or anything else. I didn't read the papers. All I knew was that I was taking up the lands; but I didn't read the dates or anything else, but simply signed." I cannot tell whether that is the correct date, or not, because I didn't look to see. I didn't read the body of the papers at all. When I signed the papers a second time I went before a notary. I was told to go and Stein took me to the notary. Everything was filled out, and all I had to do was to sign. I don't know whether Stein took the papers; I simply left them there, and went off about my business.

(The application was dated the 3rd of March. The certificate of purchase, signed by the officers of the State, is dated October 17, 1898, and that certificate states that on October 10, 1898, Moses paid the State of California \$176.

When I first signed the papers, Stein had told me that every citizen was entitled to take up school lands, and it would not cost me anything to do it. He asked me if I knew Hyde, and I said yes, I knew him by reputation. He is a land lawyer, and I had great confidence, because I knew Mr. Hyde. I had known of Hyde's reputation being good, and I was perfectly satisfied and had confidence that he was all right, and I told Stein that if Mr. Hyde is kind enough to get these papers out gratis that I will take up school lands, and told him to go ahead. Stein gave me to understand that

I would have the right to sell the land after I filed my application and secured the right. He told me to keep the scrip.  
 738 Some day it would be worth something. I understood I could do as I pleased with it.

I never made any agreement that I would transfer the land to Hyde. That came afterwards, as I have testified.

Redirect examination.

By Mr. BAKER:

I never paid any money for the land.

Further cross-examination.

By Mr. CAMPBELL:

The paper that I took home and put in my bureau drawer, I didn't examine very thoroughly. Looked like an oblong paper, more like



a deed. It was what I understood was my title to the scrip, and I understood I had a right to sell it whenever I got ready.

Further redirect examination.

By Mr. BAKER:

Witness is shown one of the approvals of applications to purchase state lands, and said that the paper he took home and locked in his bureau drawer looked very much like that. When it is folded up it looks like that, considerably like a deed.

739

*Abraham J. Stein.*

Direct examination.

By Mr. BAKER:

Barber, reside in San Francisco:

Know Hyde very well. Became acquainted with him fifteen or twenty years ago. I have not had any connection with him in regard to school lands—in regard to lands. Hyde was a patron of mine. One day he asked me if I had any friends, to take up land. I told him I thought I had. He told me to get them. He gave me ten dollars apiece to pay them for their trouble. I got ten for him. This conversation occurred in my shop. He said the papers were in John F. Lyon's office. I was to ask these people to go over to Lyon's office and sign.

I had friends of mine come to the place, and I asked them if they wanted to make ten dollars. They said they would. I said, "Go right over across to Lyon's and sign your name," and they did so.

I and my wife, Sarah Stein, Paul Moses, C. N. Stein, a foster brother of mine, A. B. Glassman, a friend of mine, Mrs. Danhauser, W. S. Eveleth, a printer, William Schlipf, lived next door to me. All of them signed the papers.

Nothing was said in the conversation between Hyde and myself about where this land was located, or anything about the land. Hyde gave me twenty dollars in all for my services, in all. I paid the claimants ten dollars apiece. Mr. Hyde gave me the

740 money. As soon as these people signed, I gave them the money. I don't know how many times they signed. I suppose the notary told them themselves—when they had to do it. I don't know. I sent them to the notary but once. When they came back from signing I would pay them their money the same day.

I remember Mr. Moses. I paid him the money, right after he signed. I never saw any of them sign.

I didn't go with my wife. I was busy at the time. I didn't make an application at that time in my own name. I sent them to John F. Lyons, the notary. He is dead. After I got through, Hyde paid me my money. Prior to that, he gave me money to pay the applicants. Gave it to me all at one time. It was about March of that year when I got them to sign. I cannot say who fixed the price that was to be paid to each of the applicants.

Witness was then shown papers in application to purchase No.

12,323, in the name of Sarah Stein (list B of the bill of particulars), and he identified the signature of his wife Sarah Stein, on the application and on the power of attorney; and the application and power of attorney were thereupon offered in evidence as relating to lands in list B of the bill of particulars. My wife did not put up any money. I don't know what the others did. In my conversations with Hyde, there was not anything said about these people paying for the land.

The papers in application 12,330, in the name of Paul L. Moses, list B of the bill of particulars, were then offered in evidence; also the papers in application to purchase No. 6561, in the name  
741 of C. N. Stein, in list B of the bill of particulars; also the papers in application 6560, in the name of A. B. Glassman, in list B of the bill of particulars; also the papers in application No. 12,322 in the name of William Schlipf, in list B of the bill of particulars.

#### Cross-examination.

By Mr. WORTHINGTON:

My transaction with each of these people was about the same thing. About the same thing with one as with another. These transactions took up several days. After that, I didn't know any more about it. None of these people, to my knowledge, took any papers home with them, and none of them brought me papers a month or so afterwards.

I know Mr. Moses was one of these people. I don't know whether Mr. Moses took his papers that he got from the Land Office home with him and kept them for a month or so. The papers were not in my possession. Mr. Moses did not come to me a month or so after he signed those papers and tell me he had his scrip. Nothing of that kind occurred.

"Q. Did not Mr. Moses take his papers, or his scrip, or whatever you call it, home; and did you not approach him about a month afterwards and speak to him about it, and get him to sell it? A. No, sir; not to my knowledge.

"Q. Well, do you mean to say that it did not happen, or that you do not recollect it? A. I don't know anything about that.  
742 sir. He may have had them; but it has been so long since that probably I have forgotten it."

Mr. Moses was in my shop getting shaved. I asked him if he wanted to take out some land, and he said he would. I told him there was ten dollars in it for him, and he said all right, and I told him to go over to Lyon's and sign. That is all that happened, and that is all that happened to all of them. Mr. Moses went over to the notary, then he came back. He didn't bring any papers with him. I didn't hand him any papers. Didn't hand them to any of these people. I don't know what Moses did. If he took papers home, I didn't give them to him. I simply told him to go to the notary's. He came back and said he had signed the paper, and I gave him ten dollars, and that was the end of it, nothing more about it. I am pretty clear that was the end of the transaction with Moses.

I told these people for whom I was acting. I told them they could go and take up land, if they wished, and sign up, and I would give them ten dollars. The people that I got, I told them that I was acting for Hyde. Just told them to go across the street to Mr. Lyon's and sign. Just told them I was acting for Hyde—nothing more. Didn't have any conversation with Moses about Mr. Hyde.

"Q. Did not Mr. Moses ask you for whom you were acting, and did not you say Mr. Hyde would attend to it; and did he say that was all right, because he knew Mr. Hyde and that he had a good reputation? A. Mr. Hyde has a splendid reputation."

743 Mr. Moses never saw Hyde. He did not know him. He told me he did not know him. None of my clients knew Hyde. None of them saw him. Mr. Moses did not say anything to me about what kind of a man Hyde was, or his reliance on him.

Redirect examination.

By Mr. BAKER:

Nothing was said between Moses and myself about the legality of the transaction.

*D. J. Cullen.*

Direct examination.

By Mr. BAKER:

Reside in San Francisco. Signed a paper. Did not read it. Don't know whether it was for school land or not. Some person who was well acquainted with me—cannot recall the party now—came to the Grand Hotel Café, which I was managing at the time, and asked me to sign it, and I did. I didn't read the document when I signed it.

Don't know Joost H. Schneider. Don't know Hyde personally. May know him by sight. I never appeared before any notary. The paper was blank when I signed it. Only signed one paper. That is my signature to application No. 12,309, and the address under it, 1717 Ellis Street, is in my handwriting.

744 I don't know Mr. Greenblatt. Positively, I did not appear before anybody and swear to that paper. Never heard anything more about it until the Marshal called at my residence in San Francisco. (This application is in List B of the Bill of Particulars.)

Cross-examination.

By Mr. WORTHINGTON:

I have not been in the habit of signing blank papers placed before me, except when the parties I signed for were personally known to me. I have signed petitions—what I thought were petitions—for some people. I have often signed what I thought would be petitions for positions, or something of the kind, when I would not know what I was signing.

The position I held there was a very busy one. Very frequently a man would rush in and say, "I want you to sign this, Mr. Cullen."

I would ask what it was. He would say, "It is all right"; and I would sign it.

For in the neighborhood of three years I had charge of the Grand Hotel Café. Couldn't exactly say the years. I know it was about the time of the signing of this petition. About eleven years ago, I think. I cannot tell the exact date when I was managing this Grand Hotel Café, between eleven and twelve years ago. Probably 1896 or 1897, or some where along there. Might have been 1895. Could not swear it was not 1894. Don't think it was as far back as 1893.

745 Somewhere about 1894, 1895, 1896 or 1897 that I went there.

That is as near as I can come to it.

Couldn't give any idea of the number of papers I signed at that time without knowing what was in them. Not in the habit of signing papers that were blank, except as I say, that some friend would come whom I would know personally, and I would sign. I have signed lots of petitions without reading them. Could not say whether more than once I signed my name to blank paper so that anybody could write over it what they pleased. I have signed lots of petitions, and such. I first saw this paper which the District Attorney has shown me a little over a year ago, when the Deputy United States Marshal/ called at my residence in San Francisco. That was the first time I saw the paper after I signed it. I recognize my signature. I could not recollect the transaction, any more than somebody came in and asked me to sign it. I remember that—because my signature is there—couldn't say what kind of looking person it was. Don't remember anything about it. If I could know the man's name, I might know him personally. I do remember signing that paper—that is my signature. I was in the front part of the café at the bar in the Grand Hotel, not a desk. I put the paper down on the bar and signed my name to it. I remember it was in the front of the bar because I was always walking up and down in front of it, and didn't go back to the office to sign it. I certainly must have been standing in front of the bar. I remember that I signed the paper,

and that is my signature, because I recognize the signature.

746 That is all I do remember about it.

Don't know Greenblatt. I could not swear whether the line was drawn through the words "And that said land is timbered land" when I signed the paper. Could not swear it was not. I know there was no writing on it. I know it was blank. I remember signing this particular paper. Don't remember whether those lines were drawn through there. I remember the general appearance of the paper when I signed it. Can't remember what he told me when he asked me to sign it. I did not read the paper. I could not say that I remember whether he talked to me half a minute or half an hour. I have been before a notary in San Francisco, to acknowledge a business paper, or two occasions, one when I was sworn in near the United States Mint. The other time when I went into partnership.

I don't remember whether I went before a notary at all during the three years that I was running that café.

Redirect examination.

By Mr. BAKER:

I received no compensation for signing the paper. Don't know Morris Friedlander, to my knowledge.

*Joseph Dixon.*

Direct examination.

By Mr. BAKER:

Reside at 3070 California Street, San Francisco. Was born 747 there 34 years ago.

I am a salesman and was salesman in 1897, for Mr. M. Hart's furnishing goods store. He is a haberdasher. Hart called me in one day and asked me if I wanted to take up some land, and I signed the paper that he had there. That is all I did and went out. Didn't pay any money, and no money paid me. Only remember signing one paper. Couldn't say for sure whether I signed more. Don't know. I could tell if I saw it. Might have signed two. Didn't go before a notary. My signature appears to application 2514.

I know James N. Ellis when I see him. Did not swear to the paper before Ellis that I know of; almost positive that I did not. I was in Hart's store when I signed the paper. Hart was present. Nobody else that I remember.

That is my signature to the power of attorney. Did not acknowledge it before notary public that I know of.

Ellis has been in the store and I have sold him goods. He is in and out there all the time. Don't think I ever acknowledged the paper before him. I cannot say positively. That is all. I might have signed the paper. I might have been there before notaries. Would not say I have been before Ellis on this particular case. Leaving out Mr. Ellis, after I had my conversation with Hart, I didn't swear to that paper. Now that I have seen the two papers, they both look like my signatures, and I must have signed them.

Don't think I acknowledged the power of attorney before 748 any one, after talking to Hart. Did not receive any compensation.

The papers in application No. 2514, in the name of Joseph Dixon (in list B of the bill of particulars)—the application to purchase and power of attorney—were then offered in evidence. Also the papers in application No. 12,309 (List B of the bill of particulars), in the name of D. J. Cullen.

The power of attorney in the Joseph Dixon case is to John A. Benson, dated July 9, 1897. In the D. J. Cullen case, there is no power of attorney in the record of the application.

I have met Benson in the store. He has been in and out. I have sold him goods. I have seen him talking to Hart in the store; maybe on the sidewalk or the street in front of the store. I have seen Mr. Benson in Mr. Hart's office, in the store. He would come in

and go out. In fact, I never paid any attention to him. They did not have any financial transactions, that I know of.

"Q. I will ask you whether or not Mr. Benson was in the store when you signed the application? A. I don't think he was. I would not say for sure. I told the gentleman at the time I wrote that paper that I wanted that stricken out. There was a place there where I told him I was almost sure he was; but not positive."

My best recollection is that he was not in there. He was in and out so much. He was in to buy stuff, and to talk to Hart about buying an automobile, and sometimes talking to him.

749 Cross-examination.

By Mr. CAMPBELL:

I have lived in San Francisco all my life. Been engaged with Mr. Hart about twenty-two years. He kept one of the largest haberdashery stores there.

Mr. Ellis and Mr. Benson were both customers, and they were coming in and out. There was no difference between the visits of Benson and Ellis and those of other customers, except some who came in didn't know Mr. Hart. To the best of my recollection Mr. Benson was not in the office when I signed that paper. I don't know. I don't think he was. I don't think Mr. Ellis was in the store at the time, but I don't remember. I don't know what year it was.

The matter was first brought to my attention a little after the earthquake we had there. One day a man came in and served me with a subpoena—left a note telling me to come over to a place on Post street, they wanted to see me. They didn't show me these papers then. Mr. Neuhausen asked me where I took up the land. I told him I didn't know. The chances are they showed me these papers then. I do not recollect. I think the first time I saw these papers was upstairs, yesterday, and that is the first time since 1897 that I saw them, except as I saw them in Post street. In Post street Neuhausen asked me if I knew where I took up the land. I told him no. He said I took it up in Alpine county. I don't remember whether he showed me this paper or not. I never talked with Benson about it. I don't know whether Benson ever had any-

750 thing to do with it or not. Mr. Hart asked me to take up the land. I was waiting on a customer one day. Hart says, "When you are through, come in the office, I want you to sign a paper to take up some land. It may be worth something to you some day." I went in and signed it. I don't know whether Mr. Hart paid the money. Don't know and don't care what became of the application. Don't know whether I will ever get anything out of the land. I have given up all thought of it. In fact, never thought of it until I was subpoenaed.

*George J. Knox.*

Direct examination.

By Mr. BAKER:

My occupation is that of a bank clerk, and I reside in San Francisco.

The papers in application to purchase No. 2251 were then shown to the witness and he identified his signature on the application and also on the power of attorney; and further testified:

I know the signature of George T. Knox. He was my father; but is now dead. I must have signed these papers in his office and therefore must have appeared before him. I have no recollection of it; and not a very clear recollection of signing the papers. I paid no money and received none in this transaction, at the time or at any other time.

751 The papers in application to purchase No. 2251 (list B of the bill of particulars) in the name of George J. Knox, were then offered in evidence.

I have had nothing to do with these papers since that time, but about four and one-half to five years ago I received two papers; one a copy of the Land Office records, and another a deed which I was supposed to sign; but which I did not sign. I never made a deed to this land to anybody to my knowledge.

Witness was then shown Exhibit 407, and he stated that it was one of the papers received by him in regard to this property. The paper was then offered in evidence and is in the words and figures following:

EXHIBIT No. 407.

State of California,  
Surveyor General's Office,  
Sacramento.

I, Victor H. Woods, Surveyor General and Ex-Officio Register of the State Land Office, do hereby certify that the records of this office show that on the 17th day of August, 1897, there was filed in this office an application No. 2251 Ind. by Geo. J. Knox, to purchase of the State the following described land, to wit:

E.  $\frac{1}{2}$ , E. 2 of N. W. 4 N. W. 4 of N. W. 4 of Sec. 16 T. 26 S. R. 37 E. N. E. 4 and S. W. 4 of S. W. 4 of Sec. 16, R. 27 S. R. 33 E. M. D. M.

Applicant's address given as No 526 Guerrero St. S. F.  
752 That said application was in due time approved by the Surveyor General and payment made to the County Treasurer as required by law, and on the 1st day of April 1898 the Register issued to said Geo. J. Knox a certificate of Purchase for said land.

That on the 19th day of August, 1899, a State patent for said land was issued to Geo. J. Knox.

Witness my hand and seal this 23rd day of February, 1903.

VICTOR H. WOODS,

*State Surveyor General and Ex-Officio  
Register of the State Land Office.*

Witness was then shown Exhibit 408, and he identified the same as the other paper which he had received, and stated in respect thereto as follows: My father brought that to my office, and told me these had been left with him. This was about four or five years ago, as I recollect. Exhibit 408 was then offered in evidence and is in the words and figures following:

### EXHIBIT 408.

STATE OF CALIFORNIA.

*County of San Francisco:*

On this — day of —, 1903, before me, —, a Notary Public in and for the said County, personally appeared Geo. J. Knox, who being first duly sworn deposes and says:

753 My name is Geo. J. Knox.

My occupation is —.

I reside —.

I am the same — who purchased of the State of California the following described land E. 2 E. 2 of N. W. 4; N. W. 4 of N. W. 4 Sec. 16, T. 26 S. R. 373, N. E. 4 and S. W. 4 Sec. 16, T. 27 S. R. 33 E. M. D. M.

I disposed of the said land in the following manner: For a valuable consideration I sold the above land to F. A. Hyde, No. 415 Montgomery St., S. F.

Sign X.

Subscribed and sworn to before me this — day of —, 1903.

WITNESS (resuming): I did not swear to this paper.

Cross-examination.

By Mr. WORTHINGTON:

Father died July 17, 1907. In 1897 he was a notary public. Had no other business to my knowledge. I will be thirty-five years old on August 21.

754 There is no question about that being my signature, not any question about father's signature. I signed the papers at father's request. Father spoke to me and told me he had been advised to take up some timber lands for me; that he was to make a deposit of something like twenty-five dollars, and if the proposition did not come out advantageously he would be refunded that money; and I don't know whether it was on that day or some



time afterwards that I signed the paper. He said a friend of his had spoken to him about the land; didn't mention his name. This happened in San Francisco. I signed the papers at father's office. I could not say that I don't recollect that he did swear me. I simply do not remember. When my father died he was eighty one, a man of very high character and standing.

No question about my signature being on the power of attorney, nor as to my father's signature and seal to the acknowledgment, where he says I acknowledged it before him. My father was to put up the twenty-five dollars that was required to make the first payment on the land. He said if it was a loss he was to get the money back. He did not say what would happen if it turned out advantageously.

My father never said anything to me as to any obligation I would be under to transfer the title to anybody.

I don't know whether my father put up the necessary money to get the land. I have no knowledge about it. This is the paper which was to be executed by me, purporting to be an affidavit that I was the same party who purchased the land described, that I disposed of it for a valuable consideration for Hyde. My father brought me that paper. He told me what it was and asked me to sign it. I reminded him that I had signed the original paper at his request. He seemed to have forgotten the whole transaction. I had no knowledge where the original application went after I signed it for  
 755 father. I understood that it was the application to have some school lands granted, and I left the details to father.

Redirect examination.

By MR. BAKER:

When my father brought this paper and told me it was left for me to sign and swear to, he told me it had been left by someone in his office for me to sign, and he wanted to know if I understood anything about it—he seemed to have forgotten it—and he wanted to know if anybody had been using my name. I looked them over and I recollected that he had spoken to me about taking up land for me, and I tried to recall that fact to his memory, but he didn't seem to remember anything at all about it.

I told him that the papers said I sold it for "valuable consideration," and I would not sign the paper. I never sold that land to Mr. Hyde to my knowledge. Afterwards a party who said his name was Hyde called on me. His face was familiar; but I did not know him. He asked me if I owned the land in Curry county. He didn't say anything about this particular affidavit. Never said anything about making an affidavit.

This gentleman called to see me, and asked if my name was George J. Knox, and if I owned lands in Curry county. I said yes. He told me there was a Government inspector who was to subpoena me, but that his subpoena was not worth anything; that he had no

right to do that. That he wanted to take my testimony; that  
 756 I didn't have to do that, and he said a wink was as good as a  
 kick, or words to that effect; that I would only be paid a dol-  
 lar and a half a day, and would have to go to Washington, and that  
 I need not do so.

This conversation occurred about a year and a half ago, I should  
 judge. This man was short, rather stout, florid complexion, fray  
 hair, between 50 and 60, or 55—something of that kind.

When my father asked me to take up this land in the first place,  
 he didn't tell me where the land was.

Recross-examination.

By Mr. WORTHINGTON:

This (indicating the defendant Hyde) is not the gentleman who  
 called upon me and who said his name was Hyde.

Recalled for further direct examination.

By Mr. BAKER:

Witness was then shown the papers in the following applications  
 to purchase, and he testified with respect thereto in the following  
 manner:

Application No. 6474, in the name of Cleveland Forbes the no-  
 tary's signature on the application is that of my father. To the best  
 of my knowledge the same is true of the power of attorney.

Application No. 2246, in the name of Kate T. Forbes. That is  
 my father's signature as notary on the application, also on the power  
 of attorney, to the best of my belief.

757 Application No. 2273, in the name of Stanley Forbes. The  
 signature of the notary on the application is my father's to  
 the best of my belief, and the same as to the power of attorney.

Application No. 2274, in the name of N. R. Harris. The signa-  
 ture of the notary is my father's, to the best of my belief; and the  
 same as to the power of attorney.

Application No. 6628, in the name of Sarah Dean. The signature  
 of the notary is my father's, and the same is true of the power of  
 attorney.

The dates of these papers run along in the year 1897, and the  
 powers of attorney were to F. A. Hyde.

Cross-examination.

By Mr. WORTHINGTON:

In 1897 and 1898, we resided at 444 California Street San Fran-  
 cisco. I lived in the same house with father. I was in the postoffice  
 at San Francisco then, a different office from my father's. Only  
 familiar in a general way with the way father transacted business.  
 I would, at times, be in his office when he was attending to notarial  
 business. I have not personal knowledge as to what his habit was in  
 certifying that people had appeared before him when they had not.

As far as I saw it, he always had the party before him when he certified that he had been there. Of course I would not know what he was doing when I was in his office, unless I was paying particular attention.

The name of A. B. Forbes is familiar to me. He was the  
758 agent of the Mutual Life Insurance Company. I have got a policy with those people. He had an office at Sansome and California streets. I know of him. Could not state whether Cleveland Forbes was his son. Could not state that Kate Forbes was his daughter.

I have heard the name of Harris. Don't know Nick Harris, who is in the Secret Service.

Don't know a man by the name of Peter Dean, head of a lumber company. I know some Deans. Don't remember the Sierra Lumber Company.

My father was notary for a great many prominent institutions in San Francisco. He was notary for the Hibernia Savings & Loan Society, the German Savings & Loan Society; for the London, Paris & American Bank, for the Clay Street Bank, and, I think, for the French Savings Bank.

During the last five or six years of father's life he was in very poor health. He came to me and didn't remember something that had transpired a few years before that.

*Jeremiah L. Donovan.*

Direct examination.

By Mr. BAKER:

Now reside in San Francisco. In 1898 resided in Contra Costa  
County, near Cornwell. I know the defendant Schneider. He asked  
me to make an application or whether I had made an appli-  
759 cation for Government lands, and if I wanted to take 160 or 640 acres. I told him I didn't know anything about it; that I would not consider the matter. He saw me afterwards, and asked me what I thought about it and if I would make application, and I signed a paper for him. That was near Cornwell, in Contra Costa County, about 49 miles from San Francisco. I signed some other papers in regard to the matter in San Francisco. It was seven or eight weeks, or probably four months, after that.

Could not tell whether it was a deed or power of attorney, or what it was. So long ago I have no recollection. Schneider, the foreman, told me, when I was going to San Francisco, to call at his office on Montgomery Street, there were some papers there in reference to this land that I had applied for. I called at the office—it had F. A. Hyde, M. D. Hyde and J. H. Schneider, as near as I can remember, on the door. Mr. Hyde was there. I stated my business to the clerk, and he told me that here was the papers that Mr. Schneider had left. Mr. Hyde told me this. To the best of my recollection, that was the conversation. A boy then took me to a notary public, and I signed the papers. Then I came back, and he said there was

some money for me—I don't know whether it was ten or twenty dollars.

I would not say whether it was Mr. Hyde or the clerk who was there; and could not swear whether it was ten or twenty dollars that I got.

That is all I can remember about the matter. I don't think I swore to the first paper I signed before a notary public. It was on the ranch, and I don't know that there was a notary there. I was working for Schneider and Hyde. That looks like my signature to application No. 12423. I was in Contra Costa County when I signed it. I don't know Henry P. Tricon. To the best of my recollection, I did not appear before Tricon or any other notary to swear to the application. I was looking after cattle and farm work on the ranch. Went to San Francisco sometimes once a year, sometimes twice.

The papers in application to purchase No. 12423, the application being dated July 19, 1898, (count 34 of the indictment) were then offered in evidence.

#### Cross-examination.

By Mr. WORTHINGTON:

I had no particular time of the year for going to San Francisco. Sometimes would go at one time, and sometimes at another. Worked on the ranch nearly two years, and off and on at different times. I was working on the ranch, I think, in 1897 and 1898. I remember in 1896 serving as a jurymen in Court, and shortly afterwards I went to work for Schneider.

"Q. Who employed you? A. His foreman.

"Q. On what ranch? A. On the Hyde ranch in Contra Costa County."

That was called the Hyde ranch, and I worked on two other ranches, one was called the Coyote Creek Ranch, and the other was the Orestimba Ranch. They were in Santa Clara County. The distance from Santa Clara County to Contra Costa County is a good many miles—about 130 miles. I sent the stock from one ranch to the other. Mr. Schneider went from one ranch to another. He was at one ranch sometimes and at another ranch another time. When I moved the stock sometimes he went with me. He was on the ranch most of the time I was there, as near as I can remember. I was on the Hyde ranch when I signed this application. It was the home place where the quarters were. I signed them in an office Schneider had there. As near as I can remember no one else was present. I would not swear that there were not others present.

It was in the month of July or August when I signed the application. They shipped their cattle from Santa Clara County, in the month of July, as near as my memory serves me, and it was shortly after the cattle came from Santa Clara County. It was four or five months after that, perhaps later, when I went up to San Francisco. I had a little vacation of a few days off, and he told me I could go to

the city. The foreman told me that Mr. Schneider told me to go up there and sign the papers. His foreman's name was Kernode.

While we were there, we had one very dry year. That was the year Schneider asked me to make the application—the same year, I remember we moved the cattle from one ranch to the other on account of the drouth. Don't remember that I went to San Francisco that year oftener than I did at any other time. When

762 I went to San Francisco, a boy went with me to the notary's office. Could not swear who the notary was. To the best of my knowledge I do not know Mr. Tricou. I may have met him. The notary's office was from two to four blocks away from Hyde's office, as near as I can recollect. Cannot swear whether it was on Montgomery street or Sampson street. To the best of my knowledge I signed the paper in the notary's office. When Schneider first spoke to me about taking up the applications he asked me whether I had made an application—had ever made an application. I would not swear that he spoke to me about Government lands or about state lands. Don't know whether he said state lands or swamp lands or whether it was 160 or 640 acres. Could not recall whether he said I had the right to sell it afterwards. Wouldn't say whether he did or not. After I signed the first paper I was on the ranch, working for Schneider, six to eight months. Couldn't swear whether it was not longer. Not more than ten months to the best of my recollection. I was there until some time in April or May, of 1899. Schneider was there off and on, working on the ranches, and that continued down until the time I left. He went from one ranch to another. He had several small ranches located around there.

Redirect examination.

By Mr. BAKER:

Schneider would come there at the ranch and stay for a week or two and then go away for a couple of weeks and then come back again and then he would go from one ranch close within three or

763 four miles from there, and come back to the ranch where I was. Sometimes he stayed there a month, at the ranch where I was. When he was away, of course I didn't know where he was, except, sometimes, he wrote from the ranch in Santa Clara that he would be up, and to meet him at the depot.

*James Mason.*

Direct examination.

By Mr. BAKER:

Resides San Francisco. Notary Public. Been a notary public for about thirty years. I know the defendants Hyde and Benson. Don't know Schneider or Dimond. Maurice Friedlander, who had an office with me, and with whom I was associated in various ways, made an application himself before me for state lands, and suggested that I make an application also. I passed my application to Friedlander. I think I appeared before a notary. It was probably

George T. Knox. That is my signature on application 6470, and my signature on the power of attorney. I had forgotten about that. Don't know whether I paid any money at the time I made the application. Have no recollection of it, because I have so many financial transactions with Mr. Friedlander that I might have paid for it in the statement of my accounts, without remembering it. I have no recollection about it at all. Some time later, a long time afterwards, I made an assignment of the certificate of purchase to

C. W. Clarke. At that time I did not receive anything. My 764 best recollection is that some time afterwards, I twitted Mr. Friedlander about the transaction, and he paid me \$50. Friedlander is dead.

Application to purchase No. 6470, and power of attorney to John A. Benson were then offered in evidence. Both the application and power of attorney were dated July 15, 1897, and appear to have been executed before George T. Knox, Notary Public. The application involves lands in counts 31 and 32 of the indictment.

I have been acquainted with F. A. Hyde. I have not had much to do with him for a great many years. Have not done any notarial work for him during the last fifteen years. Did some work for him twenty years ago.

#### Cross-examination.

##### By Mr. CAMPBELL:

Have lived in San Francisco thirty-nine years. Have been a notary public since 1877. Been re-appointed right along every four years. Had various business relations with Maurice Friedlander, with whom I had an office. A great many business transactions with him. I paid money for him and he paid money for me. Friedlander signed his application before me as notary, and then he told me what he was doing and advised me to do it, and I did so. Friedlander afterwards brought me an application. I was familiar with the papers, being a notary. Knew what I was signing. Knew I was making application for certain lands. Left the details to

Friedlander to carry through. When I signed the power of 765 attorney to John A. Benson to represent me in the State Land Office, I knew that Benson was a land attorney. I knew that he was practicing before the State Land Office and I knew what I was signing. Some time afterwards Friedlander brought me an assignment and when he asked me to sign it, I knew Friedlander had parted with it, and I expected him to account to me for my share of the proceeds. Afterwards, I asked him about it and I had an accounting, and he allowed me \$50.00. The sum and substance of it all was that I knew I was making an application for state lands. I knew that I had obtained a certificate of purchase and that I was parting with the title and that Friedlander was taking care of the details of it, and that Friedlander was handling it through somebody else; but I didn't know through whom. Never had any of this kind of business directly with John A. Benson. I protested some of his notes and checks.

"I have no knowledge of Friedlander paying \$1.25 for the land. As I stated, I don't remember anything about it. I never paid any money. I have no knowledge of what Mr. Friedlander did after I passed it to him. I have no recollection of ever seeing any such item in my accounting with Mr. Friedlander.

Redirect examination.

By Mr. BAKER:

I don't remember, now, anything about it, but I presume  
766 I did at the time remember how much land I bought. I don't remember anything about paying any money. Mr. Friedlander would have been authorized to pay money for me if he had wanted to.

That is my signature as notary to application 2237, Friedlander. That is Friedlander's handwriting in the power of attorney January 18, 1898, nominating Hyde. It is a hard question for me to say whether any other persons appeared before me. People were appearing before me all the time.

I knew John J. O'Brien. Don't remember whether he appeared before me or not. That is my signature to application 2238, in the name of John J. O'Brien. I am not familiar with O'Brien's handwriting. I cannot state whether he ever appeared before me—don't remember.

"Q. Did or did you not ever take acknowledgments of papers, when the parties did not appear before you? A. Oh, yes; I have done such things."

That is my signature as notary to application 2284, in the name of E. C. Jennings. I knew Mr. Jennings very well. The last I knew of him he was in the Giant Powder Company's office. That is Mr. Jennings's signature to a power of attorney to John A. Benson, dated September 1st, 1897. Don't remember the circumstances under which he appeared before me. Cannot say whether he appeared before me or not. Cannot remember.

That is my signature on application 6477, J. F. Wallace, and my  
767 signature as notary on the power of attorney in that case to F. A. Hyde. Don't remember whether Wallace appeared before me. I knew Wallace. He was in the powder business. He was an associate of Jennings. Generally saw them together.

Counsel for the Government then offered in evidence the papers in the following cases referred to by this witness:

Application No. 2237, in the name of M. Friedlander (in list B of the bill of particulars).

Application No. 2284, in the name of E. C. Jennings; application 2238, in the name of John J. O'Brien, application No. 6477 in the name of J. F. Wallace; all relating to lands in list B of the bill of particulars.

Application No. 6470, in the name of James Mason (lands in counts 30 and 31 of the indictment).

The applications and the powers of attorney in said several cases were offered in evidence at this point.

## Cross-examination.

By Mr. CAMPBELL:

I knew J. J. O'Brien. He was a carriage manufacturer—a member of the firm of O'Brien & Sons—a prominent business man in San Francisco.

Jennings was connected with the Giant Powder Company.

Wallace was in the powder business. They were all prominent business men.

My notarial office was down in the business part of San Francisco. Mr. Jennings and Mr. Wallace lived probably within half a

768 block of my office. I mean that I have such a large volume of business that I cannot say that any particular person ap-

peared before me any particular date; and, not having any particular reference about it, I rely entirely upon my jurat, on my certificates, and on my records.

"Q. Have you your records here? A. The Government has my records for ten years.

"Q. I would like to see them. You kept a record in accordance with law, did you? A. I did.

"Q. Do these names appear in your records? A. They do."

I kept a daily record in accordance with the laws of San Francisco, which required that I should keep a record of the people who appeared before me and acknowledged instruments, or swore to affidavits; and I have that record here, and the Government has had it for a year, and I have examined it. These people appear on the record, and the record shows that they made the act, of course.

## Redirect examination.

By Mr. BAKER:

Of course, I put all official acts on my record. If they did not appear they would go on the record just the same as though they had appeared. I wouldn't put down in my record that they did not appear, of course. I couldn't take my record and read it over and tell who appeared, and who didn't. I wouldn't undertake to do it.

In some cases the record might refresh my recollection, because

769 sometimes I might make a memorandum as to who introduced them, or something of that kind. It does not appear in any of those cases (that the witness has been interrogated about), because I knew all of those people and I didn't have to keep

track of the identity of the parties, and when I took acknowledgments of persons who were not present before me, they were principally of people I knew.

*Otto T. Zinn.*

## Direct examination.

By Mr. BAKER:

Clerk in the Anglo-California Bank of San Francisco. Same occupation in 1897.

One day, eleven or twelve years ago, Mr. Lilienthal, one of the



managers of the bank, called me from my desk and asked me to sign a certain paper, which I did. I didn't know what it was at the time. Didn't read it. About two or three days afterwards, I signed a second paper in the same way. Couldn't describe the papers or the shape of them. Didn't appear before a notary public. I didn't know what I did sign at the time, but Mr. Neuhausen told me I had filed an application.

That is my signature to application 2226. Don't remember signing it. Don't know whether that is the paper or not. I know Harry J. Lask, a notary. Didn't appear before him. Signed one paper at first and one the second time. I have met John A. Benson several times in the bank there at San Francisco. Mr. 770 Lilienthal was the manager of the bank. Benson had an account in the bank. Mr. Lilienthal still living. I was not paid anything for signing the papers. Not paid anything since. My signature appears on the paper you show me, dated February 10, 1898. I have no recollection of signing this paper—the paper is a power of attorney.

The paper was thereupon offered in evidence, and is in the words and figures following:

"SAN FRANCISCO, Feb. 10, 1898.

Hon. M. J. Wright, State Surveyor General, Sacramento, Cal.

SIR: I, O. T. ZINNS, being the applicant in State Selection No. 2226, Independence District, do hereby authorize John A. Benson to appear as my attorney before your office in all matters pertaining to said Selection.

Very respectfully,

O. T. ZINNS."

Never employed Mr. Benson. I suppose that is one of the papers I signed for Mr. Lilienthal. Didn't sign but two papers, that I have mentioned, for Mr. Lilienthal—I have signed, as witness, documents at several times, but not signing as though I was signing for myself. I think I signed the papers two or three days apart. Never received a certificate of purchase or any paper in regard to land, or any patent for the land. Never paid anything.

771 Cross-examination.

By Mr. CAMPBELL:

Been in the Anglo-California Bank twenty-six years. Known Mr. Lilienthal since 1872. He was manager of the bank. He called me in the office to sign the papers. I signed them without reading them, and without knowing what they were. Didn't see Mr. Benson, that I recollect. Didn't have anything to do with Benson one way or the other with relation to this. The Seligmans of New York, act as agents for the Anglo-California Bank. The application appears to have been subscribed and sworn to before Harry J. Lask, notary public, on July 15, 1897. The date of the letter (power of attorney) is San Francisco, February 10, 1898. All I can say is that I signed two papers and never paid any attention to dates. In fact, I didn't

see any other part of the paper but the part that I signed below. I signed the papers on Mr. Lilienthal's desk and left them with him. Don't know what he did with them, nor who he employed to run the papers through. The notary public for the bank at that time was A. A. Enquist. They occasionally used to hire Harry J. Lask. At that time he didn't have a desk in the bank, since then he has. He is notary for the bank now, has been since the death of Mr. Enquist. I know his signature. That is his signature to the acknowledgment. I have known Harry Lask since 1873. So far as I know, he is a reputable man. He does business for my bank now. He has the business altogether now. The business of the bank was not altogether done by Enquist, or Lask. They might have employed  
772 others at times. Don't know of any others.

"A. I did not go before Mr. Lask.

"Q. Are you quite positive of that? A. Yes, sir; I am."

I cannot remember what papers I signed eleven years ago, in 1897, or any other paper that I witnessed in that year, or any notary public that I went before in that year.

"Q. Are you in the habit, or do you know of ever having signed a paper before this one that you did not know the contents of? A. I have witnessed a will before that for a party without reading the will at all—just witnessed the signature of the will.

"Q. But you knew it was a will? A. I knew it was a will; yes sir—that is, I was told so.

"Q. And you didn't know what these papers were at all? A. No, sir; I did not.

"Q. You did not know whether they were promissory notes for a million dollars or not? A. I did not know what it was."

Further cross-examination.

By Mr. WORTHINGTON:

Referring to the letter to the Surveyor General, dated February 10, 1898, all that I know is that I signed the two papers  
773 and I thought, as near as I can recollect, about two or three days apart. I never saw the date of the letter and never, in fact, saw the printed matter on it. I don't recollect seeing any typewriting on it. It was like this, (indicating) I signed down at the bottom of the paper. I saw no printed matter, that I know of.

"Q. You observe your signature is right under the word 'respectfully'? A. That might have been.

"Q. There is no doubt about that being your signature? A. That is my signature.

"Q. And one line of it runs right up into the 'very respectfully'? A. That might have been there; but I don't recollect it."

Notwithstanding that, when I signed my name so close to "very respectfully" that the signature runs into it, I could not say whether the "very respectfully" was there when I signed it. It might have been. All the rest of it might have been there.

When I signed the other paper I could not say whether, as to the contents of it, it stood just as it does now. It must have been—this part, (indicating), must have been there when I signed it; but I

don't recollect this part—the printed matter. It might have been folded over. Don't know whether it was folded when I signed it.

Might have been.

774 In 1898 Mr. Lask did not have his office at our bank. I think his office was on Sansome Street, opposite the bank, but I am not sure. The first I had spoken about this afterwards was in 1907, when Mr. Myrendorf called and asked about the papers. That was nine years after I had signed. After Mr. Myrendorf called on me I made a statement to Mr. Neuhausen. It was about a month or so after Myrendorf called on me.

I signed and swore to a statement for Neuhausen. On yesterday that paper was exhibited to me.

*Charles A. Murdock.*

Direct examination.

By Mr. BAKER:

In the printing business in San Francisco. I am a member of the Board of Supervisors of the Legislative Body of the City of San Francisco, corresponding with your Aldermen and City Council.

That is my signature to application 12,451. I have not a distinct recollection at this time whether I appeared before a notary. I know Mr. Tricon very well, and I either appeared before him, or, as is the custom sometimes when a notary is familiar with a signature, I signed it and it was afterwards taken before him. I remember to have appeared before Mr. Tricon; but I don't know whether it was in this case or not.

775 Cannot remember whether I ever swore to the contents of that paper before Tricon. I was willing to, and if I did not it was because it was waived. I had general knowledge, but not particular knowledge, of the contents when I signed it. I had not been on the land. I trusted that to my attorney, as business men often do. I believed it was in Santa Barbara County, but I don't remember distinctly. The whole matter was in the hands of Mr. Hyde. Except as he, my attorney, represented it, I had no knowledge as to whether there was adverse occupancy of the land. I don't remember any specific conversation with him in regard to the facts stated in the paper. I don't think I had any conversation with him as to the description of the land, or whether it was occupied. I assumed that, when he brought it before me. The facts as stated there I relied upon, because he had made them. Except as my attorney stated, I knew nothing as to whether it was timbered. The transaction has been a long time ago, and my memory is not definite. I was on the board of education at the time, with Mr. Hyde. He was president of the board, and, as I remember it, he asked me on one occasion if I had ever availed myself of the privilege of applying for school lands. I told him that I had not, and after some further conversation that I do not remember, I made the application through him and entrusted the entire matter to him. If I ever got a title to the lands, it remained in his hands. I remember no papers having been left with me. I did not get possession or exercise control over

776 it any further than that the whole matter was left in his hands to dispose of when he saw proper. I have tried, with all the mind I have, but I don't remember how much I paid; neither do I remember the amount of money that I received from it.

I am not absolutely positive as to whether I paid anything for the land. I have no recollection in regard to paying the money.

The only way I could obtain the evidence would be from my books, because if I drew that amount of money it must have been from my business, as I had no private source and all my books were destroyed in the fire. I have no means of knowing, but I have no recollection of paying any considerable amount for the land. I don't remember how much I got for it. I have a very vague idea, but I think it was not a great while after I took out the application that I received the money. Don't know how long. It made a little impression on me, however, at the time, and it has become more vague as the years have gone by. I took it up for the purpose of speculation, for the purpose of selling it again.

The record in application to purchase No. 12,121 (list B, bill of particulars) was then offered in evidence.

#### Cross-examination.

By Mr. WORTHINGTON :

I don't remember whether I made the deposit of \$20.00 or \$5.00 with Mr. Hyde. I may have done it. Certainly would not swear that I did. Could not swear that I did not. Have no distinct recollection with regard to it. If Mr. Hyde asked me for it, I

777 gave it to him. I am sure of that. It was my understanding that I had the right to make the application for 640 acres of land as a citizen of California and I desired to make that application and I let Mr. Hyde do it as my attorney. He was in the land business and I had a high regard for him. He was my friend, and I trusted the whole matter to him, and I have never made any complaint about the matter.

I was a member of the board of education at the time, and Mr. Hyde was the president. I was thrown in relation with him in that way, as well as in other ways. I knew him a long time, but became more intimate with him when we were on the board together. I had confidence in him and left the whole matter in his hands, and was satisfied with what he did. To the best of my recollection, when I made the application I had no contract or agreement with Hyde or anybody else to sell my rights. My recollection is quite vague. I am giving you my best recollection.

#### Redirect examination.

By Mr. BAKER :

When I made the contract with Mr. Hyde, I had no intention of occupying the land. Did not consider it was a homestead application, or purchase.

778

*Daniel W. McDonald (Colored).*

Direct examination.

By Mr. BAKER:

Stenographer. Reside in Oakland, California. Employed by the Mutual Savings Bank, San Francisco. Know the defendant, Hyde. Became acquainted with him a number of years ago. Colored man working for him by the name of J. V. Scott introduced me to him.

Scott spoke to me about lands. I told him I didn't wish any, or didn't have any use for them. He said I could take it up or dispose of it, or sell it and get rid of it. Subsequently I went to Hyde's office and signed an application or another paper—two papers I believe. I don't remember what Mr. Hyde said. I know I signed this paper and another paper,—I think it was a power of attorney. I saw no more of Mr. Hyde and heard no more of him for several years, until somebody came into the office telling me to call there and see him, which I did. I called and signed another paper. I don't recall, now, what it was. Mr. Hyde gave me \$10.00, or some small amount like that. That is all I got for signing the papers. I went before a notary, Mr. Tricon, or Mr. Knox, I don't recall. I don't recall how many times I went before the notary. At the time Scott spoke to me about it, I told him I didn't need it, and didn't have the money to pay for it. He said that would be attended to, or words to that effect. When I went to see Mr. Hyde I believe he explained the transaction to me. Don't recall the substance of the

conversation. The outcome was that I signed this paper. I  
779 presume something must have been said about putting up money. I presume he told me that if I did not do so, the matter would be attended to. I didn't put up any money, when I signed the paper. Don't recall where the land was situated now. I know it was shown to me. Mr. Hyde showed me the description and location.

That is my signature to application 12,420. That is my signature to the power of attorney. Signed that in Hyde's office. After signing these papers, went before a notary—Mr. Tricon or Mr. Knox, and I swore to these papers. Didn't have any knowledge as to the location of the land other than the map or the location shown me. No information as to the character of the land, whether it was timbered land or not, or was in the adverse possession of any one, or whether it was suitable for cultivation. I may have read the papers, or may have signed them as I have other papers in working around in various positions I have been in. I never paid any money for the land. I never received any money except what I have testified to. Cannot recall how long it was after I signed the first paper that I went to Hyde's office. Don't recall whether anyone went to Mr. Hyde's office with me. His office force was there, present. Don't think Scott was with me when I went to Mr. Hyde's office, the first time or the second time. We all knew in San Francisco where Hyde's office was.

Counsel for the Government then offered in evidence the application to purchase No. 12,420 (list B of the bill of particulars), in the name of Daniel W. McDonald, and the power of attorney to F. A. Hyde.

Cross-examination.

By MR. WORTHINGTON:

Don't recall how long after I signed those papers it was that somebody asked me about it. First talked to some representative of the government, I believe, in the city of Oakland, about a year and a half ago, I should judge. Don't recall his name. That was seven or eight years after the occurrence. Nothing more than the mere facts remained. I remember Scott told me that I had a right to make an application for 640 acres of school lands, and that if I did not have the money it would be attended to. He said that if I didn't take it up, it could be sold afterwards; that he could find a purchaser; and I went to Hyde's office and sold and assigned it to him.

I believe Mr. Hyde gave me the application when I first went to his office. I don't remember. He might have told me it was land that I could properly apply for and take up. He showed me a map and explained the location of it to me on the map. He made some explanations. I think he had a series of maps on the wall and showed me where this land was—explained where it was and something about it; but I do not remember what it was. He satisfied me that the papers I was about to swear to were true, and I swore to it on the faith of his statements, and believed it. Yes, I know the explanation he told me at the time was I was given to understand that the land was for my own use and benefit, and not for his, and when I got it I had a right to sell it to anybody I pleased. That was the understanding.

Redirect examination.

By MR. BAKER:

I don't recall Hyde's exact words. I supposed at the time he knew what he was talking about, that the facts in the affidavit were true. The information I had that the statements in the affidavit were true was merely what he said. I don't recall his exact words. Presume he spoke along the lines of the affidavit. I remember he read it to me, or I read it myself—I am not sure which. Don't recall any particular facts that were told me by Mr. Hyde in regard to the facts contained in the affidavit. I don't recall that he mentioned the particular point about anybody else being on the land. Don't recollect whether he said the land was not timbered land, and don't recall particularly that he said it was suitable for cultivation.

Recross-examination.

By MR. WORTHINGTON:

I recall that Hyde went up to the map and showed me where the land was and made an explanation to me about it. I don't recall

now what that explanation was. I don't recall now, but I presume the application he made had to do with the statements in the paper I was to sign. So far as my recollection goes, what he told me when making the explanation may have been that the statements in that affidavit were true.

782

*James V. Scott (Colored).*

Direct examination.

By Mr. BAKER:

Reside in San Francisco. I am a contract janitor. That is, a man who takes charge of buildings and employs men to help him take charge of them. I have a little business in dealing in mines. A little real estate at times.

In 1897 and 1898 I was in the janitor business. No other business that I know of. I kept Mr. Hyde's office clean. First employed by him, I suppose, seventeen or eighteen years ago. Haven't been employed by him since the fire. I was, at the time of the fire and earthquake. Never did any other work for him except to keep his office clean.

I told some of my friends about taking up some applications for Mr. Hyde. I took one up myself. I don't know whether it was in the state of Oregon or in Cuba where I took it up. I never owned any other land to my knowledge.

Don't know where the land was situated. Don't know whether I can go back ten years and give a correct statement of the circumstances of my acquiring the land. As far as I remember, one afternoon went into Hyde's office and interviewed him about taking up some lands for myself and friends. He told me if I wanted some government land that he could get me some; that I could locate on some, and that any future time that I didn't want this land

783 and wanted to sell it, that he could dispose of it for me. The application was made out and I signed it. I took it to the notary, I think Mr. Burnes or Mr. Tricon, I don't remember which. After I took the papers down and swore to them before either Mr. Burnes or Mr. Tricon, I don't know what became of the papers. Don't remember whether I returned them to the office or not some time afterwards. Don't remember whether it was six months or a year, or two years, I got some money from Mr. Hyde for the land. Don't remember how much, but I got some from him several times. Twice I recollect getting a check from him. It ranged from five to ten or fifteen dollars, but I did not keep track of it.

I didn't pay any money because it was not required, according to the statement as Hyde informed me. He informed me that I wouldn't have to put up any money for it at that time; and I never did put up any money for the land. I got my friends, D. W. McDonald, Henry Randolph, George H. Hamer and James H. Cole. Hamer has been dead for seven or eight years. James Cole is dead. I didn't have to go about getting these applications. Some of these men worked for me and some didn't. Mr. Randolph worked at the

Palace Hotel. We were there quite often. We talked over the prospects, buying mines and dealing in different things, and I told him I thought it was a good opportunity. We are speculating people in that country. A good opportunity to get hold of some land and sell it at a certain time. Mr. Randolph is living, but I don't know his address. He lives in Oakland. I don't know where. All the 784 men I got were of my race. Nothing was said to them by me about putting up money. I told them if they wanted to take up Government land they could do it. I told them to go to Mr. Hyde because he had his shingle sitting out, the same as any other man in business—any land lawyer.

You cannot take up one inch of land unless you take it up through a land lawyer. I have located myself, and I know that. These men didn't ask me what it was going to cost. I don't recollect whether I told them it would not cost anything to them. I went with them to the notary public, and I think I told them when the papers came where to go. I am not certain. It has been a long time ago. Cannot remember all the facts. That is my signature on application 12,401. I never sign my name twice alike. That is my signature on the power of attorney.

Mr. Cole was a janitor. He worked for me. Randolph worked in the Palace Hotel as a hat man. George Hamer was a kalsominer and white-washer. I got Mr. McDonald also.

Counsel for the Government then offered in evidence the records of the following applications to purchase school lands standing in the name of this witness and in the names of the persons referred to by him, as follows:

Application No. 12,401 (in the bill of particulars), in the name of James V. Scott.

Application No. 12,440 (count 27 of the indictment), in the name of James H. Cole.

Application No. 6613 (count 27 of the indictment), in the name of Henry Randolph.

785 Application No. 12,441 (count 27 of the indictment), in the name of George H. Hamer.

In these cases the powers of attorneys are to F. A. Hyde. The McDonald application has already been introduced. That is in the bill of particulars.

Cross-examination.

By Mr. WORTHINGTON:

I had some dealings with reference to real estate before these transactions about school lands, but that was city property, and I had some dealings about mines. It was about the same time, in southwestern Alaska. I was tolerably familiar with the rules and customs of California in regard to transferring real estate. Had traveled from Alaska way down into southern California, and I knew all about the land, as far as Idaho and Montana and all those Western States, about taking up Government lands and selling them to peo-



ple. I knew in 1898 that each citizen of California had a right to file an application and acquire 640 acres of State land, and after he had acquired it he could sell it.

In the first talk I had with Hyde I asked him about taking up school land. I wanted to get hold of a farm. He told me it would be cheaper to buy an improved farm than to buy an unimproved farm; but if I wanted it, he knew where I could get hold of some government lands and, in the course of time, if I wanted to, I could dispose of that land. There were several of us who were interested in it at that time, and we are at the present time. It was school lands. I remember him telling me on that line; that is, if I or my friends wanted to exercise our rights of getting the lands, but didn't have the money, we could borrow it from him. At the time we made the applications, didn't have any understanding with him about borrowing the money. Cannot recollect now how we expected the money to be paid. Didn't have any understanding with him about how long it would be before we could sell the lands. It was understood we would subsequently sell. I gave him the power of attorney to sell, which the District Attorney has shown me. Didn't give him any other power of attorney. May have been a year or two years after that that I saw him about selling the land; a long time afterwards. I think he sent for me and told me the paper had come, I think it was, or was ready for me to sign, and I signed them and took them down to the notary public. He told me the title had come. I understood that was my title, and I had a right to dispose of it as I pleased.

As far as I know, the transactions with the other men I have spoken about was just the same. I don't know; I was not in the office with him. When I spoke to these men about taking up their rights I told them they could take up some and, in the course of time, if they didn't want it, they could dispose of it; that it was their privilege to do so. Just told them they were not required to put up any money for it at that time. I understood that something had to be put up to the State before the State would give the title.

787 Redirect examination.

By Mr. BAKER:

I don't know anything at all about the land that I took up being in a forest preserve. I did not get any pay directly from Mr. Hyde for getting these men.

Cross-examination.

(Cont'd) By Mr. WORTHINGTON:

Mr. Hyde paid me by checks. Two of them were on the First National Bank, Murphy's National Bank. The lady who made them out in the office is now dead.

Mr. Burns, the detective, called around some years ago—about five or six years ago, as near as I can recollect, and asked whether I had taken up any lands. That was about five years after these

transactions with Hyde. When Mr. Burns came, I didn't have any conversation with him. I told him Hyde was my attorney, and if he wanted to know anything he could go and see Hyde. I never made a statement, nor signed an affidavit. Afterwards, I saw a gentleman by the name of Neuhausen, a couple of years, maybe, after I saw Burns. I didn't make any statement to him. He sent a man to see me.

*John McPhaul (recalled).*

Direct examination.

By Mr. PUGH:

This witness was here shown by counsel for the Government a bundle of papers purporting to be lieu selection No. 1153 (involving lands in count 15 of the indictment), and was asked to examine same and state what it represents; and he answered as follows:

This is lieu selection under the provisions of the act of June 4, 1897; No. 1153, by C. W. Clarke of San Francisco, California, for the described lands. The papers are from the files of the General Land Office.

The selection application No. 1153 was then offered and read in evidence, and the same is in the words and figures following

*Act June 4, 1897 (30 Stat., 36).*

Selection in Lieu of Land in the Cascade Range Forest Reserve, Lakeview Land District, State of Oregon. Created Sept. 28th, 1893.

To the Register and Receiver, United States Land Office, Vancouver, Washington.

GENTLEMEN: In accordance with the provisions of an Act of Congress approved June 4, 1897, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1898, and for other purposes,"

I, C. W. Clarke, of San Francisco County, State of California, do hereby select and locate the following described tract of unsurveyed land, to wit: S  $\frac{1}{2}$  of SE  $\frac{1}{4}$  SW  $\frac{1}{4}$ , and S  $\frac{1}{2}$  of NW  $\frac{1}{4}$ , Sec. 1; S  $\frac{1}{2}$  of Sec. 2; all of Sec. 10; all of Sec. 12; all of Sec. 13, and the NW  $\frac{1}{4}$  and SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  of Sec. 14, in Township 7 N., Range 6 E., Willamette Meridian, containing Twenty Seven

[Eight]\* Hundred and [Eighty (2800)]\* acres.

In lieu of SW  $\frac{1}{4}$  of NE  $\frac{1}{4}$  and SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$ , Sec. 16, T. 20 S., R. 7 E.; S  $\frac{1}{2}$  of SE  $\frac{1}{4}$  and SE  $\frac{1}{4}$  of SW  $\frac{1}{4}$ , Sec. 36, T. 20 S., R. 7 E.; S  $\frac{1}{2}$  Sec. 16, T. 21 S., R. 9 E.; all of Sec. 36, T. 22 S., R. 6 E.; all of Sec. 16, T. 22 S., R. 7 E.; all of Sec. 16, T. 22 S., R. 9 E.; SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$ , E  $\frac{1}{2}$  of SE  $\frac{1}{4}$ , SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$ , NW  $\frac{1}{4}$ ,

[\* Words and figures enclosed in brackets erased in copy.]

Sec. 36, T. 22 S., R. 9 E.; [E  $\frac{1}{2}$  of SE  $\frac{1}{4}$ , SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$ , Sec.  
 Seven  
 16, T. 20 S., R. 9 E.,]\* containing Twenty [Eight]\* Hundred and  
 Sixty  
 [Eighty]\* acres.

The said last mentioned tract is included within the limits of the Cascade Range Forest Reservation in Oregon, and being the owner, and desiring to select other land in lieu of said tract, I made and executed a deed of reconveyance thereof to the United States, on the 5th day of May, 1899, as provided by the said Act of June 4, 1897, which said deed has been recorded in the proper County and State. I therefore ask that a United States patent issue to me for the land hereby selected.

Witness my hand this 20th day of October, 1899.

C. W. CLARKE.

Post Office Address c/o F. A. Hyde, 415 Montgomery St., San Francisco, Cal.

(Written on side in red ink:) To R. & R. Vancouver,  
 790 Wash., selection canceled as to N  $\frac{1}{2}$  NE  $\frac{1}{4}$  & SE  $\frac{1}{4}$  NE  $\frac{1}{4}$   
 Sec. 14, T. 7 N., R. 6 E., W. M.

#### LAND OFFICE AT VANCOUVER, WASH.,

November 6, 1899.

I, W. R. Dunbar, Register of the land office, do hereby certify that the land above selected, in lieu of land herein relinquished to the United States, is free from conflict, and that there is no adverse filing, entry, or claim thereto, but the plat of survey thereof has not, as yet, been filed in this office.

W. R. DUNBAR, *Register*.

Selection approved by the Commissioner of the General Land Office, per letter "P" to Register and Receiver, ———, 189—.

——— Div. "P."

(Written on back in typewriting:) An abstract of title, duly certified by the Recorder of Crook County, Oregon, to the land designated as basis for the within application, together with original deed from C. W. Clarke and Philomen Clarke (his wife) to the United States of America, dated May 5th, 1899, recorded May 11th, 1899, in Vol. 7 of Deeds, Records of Crook County, Oregon, will be found on file with the application of C. W. Clarke, to select, under the provisions of the Act of June 4th, 1897, all of Sections 10, 14, 22, 26, 28 and 34, in Township 15 North, Range 6 West, Olympia Land District, Washington.

791 (Endorsed on Back:) Lien Selection No. 1153. Application of C. W. Clarke P. O. address San Francisco, Cal.

[\* Words and figures enclosed in brackets erased in copy.]

To select the S.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  Sec. 1, S.  $\frac{1}{2}$  Sec. 2; all sec. 10, all Sec. 12; all Sec. 13; N.  $\frac{1}{2}$  Sec. 14, T. 7 N., R. 6 E. W. M. situated in Vancouver District Washington in lieu of [the]\* land in Cascade Range Forest Reserve situated in Lakeview Land District, Oregon, under Act June 4, 1887, (30 Stat. 36). Selection approved by Commissioner General Land Office — —, 189—. Nov. 9, 1900, R. & R. selection canceled as to N.  $\frac{1}{2}$  N. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  Sec. 14, T. 7 N. R. 6 E., because E.  $\frac{1}{2}$ , S. E.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  S. E.  $\frac{1}{4}$  Sec. 16, T. 20 S., R. 9 E. of base land, was used as a basis for Sel. No. 742. Approved for patenting ——. Division "P." Patented ——. Vol. —, Page —.

WITNESS (resuming): I have examined this selection application and have compared the descriptions of the base lands and selected lands described in the application with the description of the base lands and the selected lands in count fifteen of the indictment, and I find that they correspond.

Counsel for the Government then read into the record the state applicants in whose names the base lands mentioned in the  
792 selection application, situated in the Cascade Range forest reserve in the state of Oregon, were purchased from said state, as shown in the foregoing testimony, together with the state numbers of the several purchases; and also the descriptions of the lands so purchased from the state. A half section (320 acres) was purchased in the name of each applicant. The applicants, and the state numbers are as follows:

Andrew Anderson.....	State No. ———.
Dextor Kisor.....	State No. 8708.
Maggie Hunter.....	State No. 8718.
V. P. Conklin.....	State No. 8594.
Arminta Long.....	State No. 8607.
Anna Peebles.....	State No. 8714.
Laura Dalaba.....	State No. 8715.
Wm. Hunter.....	State No. 8709.
W. W. Davis.....	State No. 8710.
Mary C. Powers.....	State No. 8713.

WITNESS (resuming): The whole of the lands purchased from the state of Oregon, as just stated, were not included in selection No. 1153. Portions of the land so purchased were embraced in other selections, and are described in list "A" of the bill of particulars. The other selections, the records of which are from the files of the General Land Office, are as follows:

Selections Nos. 505, 506, 611, 777, 1498, 1598, 762, 1833, 1836, 1849, 2039, 2416, 2763, 2793, by C. W. Clarke.

There is on file in the said records from the General Land Office a deed of relinquishment by C. W. Clarke of the school lands  
793 to the United States and an abstract of title covering the same and purporting to show the title in C. W. Clarke when the deed of relinquishment was made.

I have some other papers in connection with selection No. 1153,

The first is an appeal in behalf of C. W. Clarke from the action of the General Land Office, purporting to be signed by F. A. Hyde, attorney for Clarke, following which is a memorandum statement of the case; then there is a copy of a letter of the Register and Receiver giving notice of the action of the General Land Office, from which the appeal was taken. The other paper is an affidavit by Agnes T. McGillen who describes herself as a clerk in the office of Mr. Hyde, showing notice of the appeal upon W. H. Phipps, Land Commissioner of the Northern Pacific Railroad Company.

The appeal was filed in the Vancouver, Washington, local land office July 28, 1903, and was received in the General Land Office August 3, 1903.

"Mr. PUGH: We offer in evidence, if your Honor please, the paper just described by the witness, and call attention to the fact that what purports to be the appeal, purporting to have been signed by F. A. Hyde, is copied into the indictment as one of the overt acts.

"Mr. WORTHINGTON: Yes, I was just noting that fact. We have no objection to the paper; but the question about its effect as an overt act in the District of Columbia is one which your Honor will be asked to express some opinion about later in the case.

794 The paper, I will state to your Honor, is one which it appears was filed in the Vancouver Land Office——

"The COURT: And sent here?

"Mr. WORTHINGTON: And by the local land office there sent to the Commissioner.

"The COURT: It comes in under the counts.

"Mr. WORTHINGTON: Oh, yes; it would be evidence anyhow under your Honor's rulings whether it is an overt act or not."

The appeal referred to was then read in evidence to the jury, by counsel for the Government, and is in the words and figures following:

Department of the Interior,  
General Land Office,  
Washington, D. C.

C. W. CLARKE

VS.

NORTHERN PACIFIC RAILROAD COMPANY.

Involving Forest Lien Selection No. 1153 and Selections Ammendatory Thereof.

Hon. Commissioner General Land Office, Washington, D. C.

SIR: Please take notice that C. W. Clarke does hereby appeal to the Hon. Secretary of the Interior from your decision found in letter "F" of Mar. 21, 1903, in which you hold for cancellation forest lien selection 1153, and the selections ammendatory thereof.

795

*Statement of Errors.*

*First.* It was error to hold that the list of selections, No. 89, filed by the Northern Pacific Railroad Company on the 4th of Nov. 1899 antedated forest lien selection No. 1153 by C. W. Clarke, the fact being that said selection No. 1153 was filed in the United States Land Office at Vancouver, Washington on the 23rd of Oct., 1899 and was, therefore prior in point of time to the Railroad selection. (See letter of Register and Receiver of Jan. 5, 1900, transmitting supplemental applications of C. W. Clarke.

*Second.* On the 12th of Aug. 1902, C. W. Clarke filed in the land office at Vancouver a re-adjustment after survey, of his selection No. 1153 which re-adjustment was a re-affirmation of his selection and amounted to a re-selection of the land after survey. No attention was paid in the decision hereby appealed from to said re-designation and re-application which omission is alleged as a second error in said decision.

*Third.* As only a portion of Selection No. 1153 was in conflict with the railroad selection, it was error to cancel the entire selection No. 1153 because of such conflict.

Clarke having, therefore, filed the first application and the first re-adjustment after survey, he is entitled to the land in contest as against the Northern Pacific Railroad Company. (See Secretary's decision in this case of Jan. 21, 1903, and cases therein cited.)

Respectfully,

F. A. HYDE,  
*Attorney for Clarke.*

796 (Attached to the said appeal were several typewritten sheets, described by the witness as "a memorandum statement of the case," in the nature of a brief in support of the appeal which sheets were not read to the jury. The appeal itself is the document referred to in count 15 of the indictment.)

The appeal is endorsed on the back as follows:

U. S. General Land Office, Received Aug. 3, 1903. 131122. Department of the Interior. General Land Office Washington, D. C. C. W. Clarke vs. N. P. R. R. Co. Involving forest lien selection 1153, Vancouver Land District, Washington, and selections amendatory thereof. Notice of Appeal to the Secretary of the Interior from Commissioner's decision "F" of Mar. 21, 1903, rejecting said selections. United States Land Office Vancouver, Wash. July 28, 1903. Filed at 9 o'clock a. m. Frank E. Vaughan, Register.

797 After the foregoing paper was read in evidence to the jury, the following occurred:

"By Mr. WORTHINGTON:

"Q. I want to see that we all clearly understand about this appeal paper that you have read to the jury. It purports to be signed by Mr. Hyde. I want to know what information you can give the court and jury as to how that paper got to the Land Office here in Wash-

ington, from your records or office notations on the papers? A. Endorsed on the back of the paper—that is the jacket covering the paper, or the several papers—is a notation, 'United States Land Office, Vancouver, Washington, July 28, 1903. Filed at 9 o'clock a. m. Frank E. Vaughan, Register.'

"Q. That would indicate, then, that that appeal was filed in the Government Land Office at Vancouver on what date? A. On the 28th day of July, 1903.

"Q. And does this appeal show how it got from the Land Office in Vancouver to Washington? A. Yes, sir; I would have to have the other papers in the case, though.

"Q. If you know, I think that would be sufficient. A. There is a letter of transmittal. The letter of transmittal would show, that transmitted that appeal—the letter from the Register or Receiver, or one or the other of them, at Vancouver.

"Q. What I want to get at is whether the local land office at Vancouver sent that paper to Washington? A. That is my understanding of it. That is what would be indicated by the paper itself.

"Mr. WORTHINGTON: If that is understood to be a fact, Mr. Baker, that is all I want.

"The COURT: It was stated to be the uniform practice.

"Mr. BAKER: I understand that is the practice, to file the appeals in the Land Office out there, and then to have them forwarded here to be acted on by the Land Office here.

"The WITNESS: Yes. The usual practice is to file them in the local office.

"Mr. CAMPELL: And they are forwarded by the local office to the General Land Office here?

"The WITNESS: Yes.

"The COURT: It is addressed to the Land Commissioner here, is it, or to the office there?

"Mr. WORTHINGTON: Oh, yes; it is addressed 'Hon. Commissioner, General Land Office, Washington, D. C.' The paper is signed 'F. A. Hyde, attorney for Clarke.' "

At this point it was agreed between counsel for the Government and counsel for the defendants that the witness McPhaul should go over the selection papers which he had produced; and other similar forest lien selection papers to be afterwards offered in evidence, and should furnish to counsel for the defendants a statement or list thereof, so as to save time in the introduction of the papers and the further examination of this witness with respect thereto.

Direct examination.

By Mr. BAKER:

At present working for S. A. D. Puter in getting out a book on the land frauds. Reside at Portland, Oregon. I have been here since a week ago last Thursday. I have been assisting in examining the California papers.

I prepared exhibit 409 from the applications that were read to me by the surveyor General, Mr. Kingsbury, of California. Mr. Richard, who is in the Surveyor General's office, assisted me in the preparation of it. Examined the papers and noted in the columns the several things you have there. Checked them off afterwards.

I am acquainted with the defendant Hyde. Knew him in 1897. I was acquainted with Peter Dean. He is dead. Hyde came to the office of the Sierra Lumber Company, where I was employed. Announced he had some big project on foot, and that considerable money could be made out of it. He seemed mysterious about it. And said not to ask any questions, but to do as he directed. He suggested that applications be filed for State school lands and that those in the office should be prepared to make the filings. Don't remember all the conversation, which was more of a hint than anything else.

Peter Dean President of the Sierra Lumber Company was present, and Robert A. Dean, his son, and W. A. Van Bokkelen. I think were there, but I am not sure.

800 Some time later, applications for State school lands were brought to the office—sent over or brought by Hyde. Don't know which; couldn't say positively. They were all made out, with the exception of the signature of the applicants. They were filed in the State Surveyor General's office at Sacramento.

The only one I know directly about was the one that Miss Sarah Dean filed. I took her to the notary, George T. Knox. She swore to her affidavit. Am not sure about the others.

Could not say positively whether Mr. Hyde said anything about money or profits. He said they might make from five to thirty dollars an acre on it. At that time, it was a sort of a mysterious proposition. Did not hear Hyde say anything to any of the applicants.

Don't remember being present at any conversations between Mr. Hyde and Peter Dean. Don't think Peter Dean said anything to Miss Dean in my presence about money. She requested me to go over to the notary with her. I think the persons who took up applications were Dr. James Simpson, Mr. Van Bokkelen, Robert A. Dean, Miss Sarah Dean. I didn't know to whom the applications were given when they were brought over to the office. They might have all come in one bunch, or they might some of them come afterwards on different occasions.

Think Miss Dean filed an application which was rejected for some reason or other. Later, she filed another.

I don't know William Browell. Worked for Mr. Dean from 801 December 8, 1888, until November 11, 1897. Never heard of William Browell at Dean's place of business. Dean was in the lumber business. President of the Sierra Lumber Company. The place where Hyde came was the head office of the company, 320 Sansome Street, Room 9.

Don't know William King, nor J. A. Sargent, nor Daniel W. Fulton.



Cross-examination.

By Mr. WORTHINGTON:

Peter Dean was born on Christmas day, 1828. Had been living in San Francisco since 1849. Man of large means and large acquaintance.

Dr. James Simpson was one of the directors of the company.

*Robert A. Dean.*

Direct examination.

By Mr. BAKER:

Reside in San Francisco. Son of Peter Dean. I am Vice President of the Sierra Lumber Company. Father died in 1901. Made application in 1897 for school lands.

I know Hyde. My two brothers, my sister and myself all made applications for land at the same time. Don't recollect any details of any conversation with Hyde about 1897, when he called at the office. Suppose I saw Hyde; he acted as an attorney, as it were, or agent. Simpson took up some. Not sure whether it was  
802 Dr. Simpson or his son, Will. No one else that I know personally.

Don't know William King. I know a J. A. Sargent. I think he is purser on a vessel running out of San Francisco to Seattle. Don't know anything about my father getting his application.

Don't know Daniel W. Fulton or William Browell.

Don't recognize the handwriting "Peter Dean, 320 Sansome Street, San Francisco," in application 2258.

That is the signature of my sister, Sarah Dean, in application 6628. Don't recognize the handwriting under it.

I remember seeing the name of William Browell in the same slip of paper containing the other names—Sarah Dean, Dudley Dean, and ———. Saw it in my father's office. Have not got it with me. It was destroyed in the fire. The slip was made out in carbon. I think he had one in the safe and one pinned into an address book that always was on father's desk. Opposite the names of my two brothers and sister and myself and I think my father's name—there was a description of the land that it covered. It had some sum set opposite. In reference to the other names, I don't know. I forget whether the name of James Simpson or Will Simpson was there. I saw William Browell's name there.

At the time I made my original statement, my memory was not good. I mentioned the name of Browell, and Mr. Neuhausen suggested the balance of the names to me. Whether I actually  
803 remember them or whether I learned them from hearing him go over them, I don't know. I would say there were a half dozen names altogether on that paper. Simpson I am sure was there. I think the description and the sum set opposite the names applied to Simpson also.

I have no knowledge at all whether these people whose names were on this slip of paper had anything to do with school lands, only in

a very general way. I kept the books at that time and entered up whatever came in in a lump sum, but the details of the business I didn't understand at all.

Understood in a general way simply that we had a perfect right to locate on lands, take it up, which we proceeded to do. We all got our share of the locations that were made by my brothers and sister. We divided the profits. As a fee, Hyde, as our agent, got half. My recollection — that he acted as agent. Then I have an entry in the book that shows that he got half. Hyde got half, and we got half of the net profits.

My father had an account in his book. The original books were destroyed in the fire.

Don't recollect what share my sister and brothers received from these lands. It all went into the estate and was divided. My father had an account with each of his children, and it was treated as property on his books, just the same as if it was paid to us. Don't remember how much we got. It was a large amount, I think. Say ten or twelve hundred dollars on each section. There was an account under the head of myself, my sister, and brothers, 804 and the profits accruing from this were passed to their credit on the books.

There was an account between father and Mr. Hyde. That simply showed the proportion Hyde got for acting as our agent in taking up these lands. I can't remember the proportion Hyde got with my father—such a long time ago. I think he got half.

There were no other names in the account in my father's books. This paper I have mentioned, of which there was a carbon copy, I said contained the name of Simpson and I think Browell. I am not positive about the other names.

Can't recollect any conversation between Hyde and father about this matter. Don't recollect any conversation I ever had with Hyde about it, before or after father's death. I don't think Mr. Van Bokkelen's name appeared on this memorandum. The paper I have mentioned was made by Mr. Van Bokkelen. I simply took from the papers of Mr. Van Bokkelen the sums of money that were received and entered them in the books. No entry in the book showing settlement with Browell, nor with Fulton, nor Sargent, nor King. They had no accounts in the book.

#### Cross-examination.

By Mr. WORTHINGTON:

I never saw the name of Browell mentioned in the book in any way. It appeared on the book that we spoke of that Mr. Van Bokkelen made a copy of, and which father always kept pinned in his address book. Another copy was in the safe. That 805 seemed to be a statement of accounts between father and Browell. But I don't recollect what figures were associated with the names outside of our own immediate family.

I think I recollect seeing the name of Daniel W. Fulton among the papers or books in father's possession. I am not certain. That is my best recollection.

Father had a very large acquaintance. He had many acquaintances and friends that I didn't know.

By Mr. CAMPBELL:

I am fairly well acquainted in San Francisco. I am not acquainted with William W. Browell who conducts a tailoring establishment in the Mutual Bank Building. Don't know whether father knew him. He might very well have.

There is a gentleman by the name of D. W. Fulton, who conducted a hatter establishment in the Thurlow Block.

I knew Dr. Simpson and his son.

The only person I know by the name of J. A. Sargent was a purser on a vessel. I don't know young Dr. Sargent.

I would not say those people were not in existence.

By Mr. WORTHINGTON:

I have no accurate knowledge of what my father did in these land transactions in dealing with people who make applications. I simply assumed he was giving his friends a chance to make a little money. He thought it was a perfectly legitimate thing for us to take up this land. I only know about what he did with his immediate family. The profit was passed to our credit on the books. Don't remember

806 who asked us to make the applications. Don't remember whether it was father. Don't know what father did about asking his friends or acquaintances to make applications or to go into the venture. All I remember is that he seemed to be keeping the accounts.

At the time I made the application, don't remember having an agreement with anybody. Did not agree to sell my rights to anybody. Don't recollect how long afterwards I did anything about disposing of my right or authorizing my father to do it. It was a year or two afterwards. That is all I can remember. Took up the land in 1897. It was disposed of before father died in 1901. Some time during that interval, I authorized my father or somebody else to dispose of my interest. I don't recollect whether or not I sold or authorized my interests to be sold before the land was gotten. I don't recall any of the details.

Redirect examination.

By Mr. BAKER:

Don't recollect anything about my sister paying any money. Don't know about my brother. Always assumed that my father put up the money for us. The same applies to myself. Don't recollect any figures being opposite any of the names except those of our immediate family in this memorandum. Don't even remember whether descriptions were opposite their names. As the land was sold, the profit accruing from it was passed to my credit on the books, which amounted to the same thing as getting the coin. I did not get the money on one piece until after the death of my father.

807 Recross-examination.

By Mr. WORTHINGTON:

I was drawing money from time to time, being charged with it on the books. The money was going to my credit. My brother was going to college about that time, and he was given an allowance to live on. Some time before father's death, he deposited to the credit of myself, my brothers and sister what he received out of the transaction, and after his death a settlement was made.

By Mr. BAKER:

There was an account with each one of us in the book. We would be given credit with the amount according to whose application was sold.

*Charles P. Lyndall.*

Direct examination.

By Mr. BAKER:

I reside at Los Angeles, California. My occupation is fire insurance. Los Angeles is 484 miles from San Francisco.

I am acquainted with Joost H. Schneider; I am his brother-in-law. I signed an application for school lands, but have forgotten the circumstances. My recollection is that I was visiting Schneider in East Oakland, and at his request I signed an application. I did not go before a notary. I think there were two papers I signed. Since

that time I have not signed, to my recollection, any papers in  
808 regard to the property.

Witness was then shown application to purchase No. 6603, Los Angeles district, dated June 15, 1898, and was asked to state whether the signature thereon was his. He answered: "Yes; that is my signature; and the same is true as to the powers of attorney. The post office address on the application is not my handwriting. The capital letter "E" and the small letter "d" and the "Cal." are in my handwriting. Of the words and figures: "623 West 15th Street, Los Angeles," the "15th Street" is in my handwriting, and the "623 West" resembles the handwriting of Schneider; and the "Los Angeles" seems to be in the same handwriting as the "623 West."

Witness was then shown what purports to be an assignment accompanying the papers, and stated that the signature thereon was his. He further said: "I can't tell when I signed it and didn't know that I had ever signed it. I can't state positively when I was in East Oakland, unless by reference to the date of the application. Looking at the date on the application I cannot positively refresh my recollection as to when I was in East Oakland. I usually staid there a week. I visited San Francisco usually twice a year; generally in January or February, and then either in June or July. I could give you a list of the times I have been there, with this one exception, but unfortunately I have not got this one. These were all business trips. The first trip I made to San Francisco in 1898 was some-

time in the month of January. That is fixed definitely in my mind from the fact that I had recently been employed by what was  
 809 then the Home Mutual Insurance Company, and that was my first visit to the home office. I am almost positive I made another trip in the summer of 1898; but unfortunately my records regarding that have been destroyed. I can give you the dates of my visit subsequent to that, if you wish it."

"A. If I was there in June, I was not there after that in 1898. Then, in 1899 I was there from January 8th to January 15th, and from June 25th to July 2d in 1900."

The witness was then shown the assignment connected with the application No. 6603, and which purports to have been acknowledged by him on the 18th day of March, 1899, before Henry P. Tricou, Notary Public for the City and County of San Francisco, California, and was asked where he was on that date; and answered: "I was in Los Angeles. That was on Saturday." I don't know Henry P. Tricou and never appeared before him.

The assignment referred to was then offered and read in evidence. (The land described in the said assignment is the same as that described in the application to purchase and is in part in count 27 of the indictment.)

WITNESS (resuming): I do not know John F. Lyons and never appeared before him. I paid no money on these lands; and I received nothing. I had no communication with Schneider in relation to the matter, to my recollection. Have told all that took place  
 between Schneider and myself in reference to this land, so  
 810 far as I can remember. I never had any communication with Hyde in regard to it; or anybody else. I knew nothing about where the land was; or whether it was suitable for cultivation; or held adversely by anybody. I knew nothing about it.

The papers in application No. 6603, other than the assignment already introduced, were then offered in evidence and read to the jury, including the said assignment. They are as follows:

Know all men by these presents: That I C. P. Lyndall of San Francisco State of California have made, constituted and appointed, and by these presents do make, constitute and appoint F. A. Hyde of San Francisco my true and lawful Agent and Attorney in fact, for me and in my name, place and stead, to enter into and take possession of certain lands described as follows:

N  $\frac{1}{2}$ , SW  $\frac{1}{4}$  and N  $\frac{1}{2}$  of SE  $\frac{1}{4}$ , SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Sec. 16, T. 3 N., R. 4 W., S. B. M. in San Bernardino County, State of California, now belonging, or hereafter to belong to me, or to the possession of which I am now, or may hereafter become entitled, and to that end to institute and cause to be instituted all suits and actions which he may deem proper; and to grant, bargain, sell, convey, release, quit-claim or lease said land, or any part thereof, for such sum or price and on such terms as he may deem proper.

And for all or any of the powers and purposes aforesaid, for me, and in my name to make, execute, acknowledge and deliver  
 811 all necessary deeds, conveyances, assignments, or other instruments of whatever kind or nature.

Giving and granting unto my said Attorney full power and authority to do and perform: all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said Attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue hereof.

For and in consideration of the sum of ——— dollars to me in hand paid, the receipt whereof is hereby acknowledged, this Power of Attorney is hereby made and declared to be irrevocable by me or otherwise.

In witness whereof I have hereunto set my hand and seal on the 15th day of June, one thousand eight hundred and ninety eight.

Signed, sealed and delivered in the presence of

C. P. LYNDALL. [SEAL.]

STATE OF CALIFORNIA.

*City and County of San Francisco, ss:*

On this 15th day of June, A. D. Eighteen hundred and ninety eight before me John F. Lyons a Notary Public in and for said County personally appeared C. P. Lyndall known to me to be the person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same.

Witness my hand and official seal.

[SEAL.]

JNO. F. LYONS.

*Notary Public in and for the City and County of  
San Francisco, State of California.*

Know all men by these presents, That I C. P. Lyndall of Los Angeles County being desirous of purchasing from the State of California the following described land, to wit: N  $\frac{1}{2}$ , SW  $\frac{1}{4}$  and N  $\frac{1}{2}$  of SE  $\frac{1}{4}$  & SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Sec. 16, T. 3 N., R. 4 W. S. B. M. do hereby nominate and appoint F. A. Hyde of San Francisco as my agent and attorney in fact to represent me in the office of the State Surveyor-General and Register of the State Land Office of the State of California to file my application to purchase the said land, and to receive from the State Surveyor-General an approval of the said location, and upon due payment being made, to receive from the Register of the State Land Office my certificate of purchase for said land, which documents, or any others pertaining to my case, the said State Surveyor-General and Register of the State Land Office is hereby authorized to deliver to my said attorney.

In case it may be deemed advisable by my said attorney, I hereby authorize him, for me and in my name, place and stead, to abandon any application to purchase the said land which I have filed or may hereafter file, or to abandon any part thereof.

Witness my hand this 15th day of June 1898.

C. P. LYNDALL.

STATE OF CALIFORNIA,

*City and County of San Francisco, ss.:*

On this 15th day of June One Thousand Eight Hundred and ninety-eight before me Jno. F. Lyons a Notary Public in and for the City and County of San Francisco, personally appeared C. P. Lyndall known to me to be the same person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL.]

JNO. F. LYONS,

*Notary Public in and for the City and County of  
San Francisco, State of California.*

*Application to Purchase State Lands.*

Location No. 6603, Los Angeles Land District.

State of California, City & County of San Francisco.

To the State Surveyor-General, Sacramento:

I, C. P. Lyndall, of Los Angeles County, do hereby apply  
814 to purchase the land hereinafter described, and in support of  
my application I do solemnly swear that I am a citizen of  
the United States, a resident of this State, of lawful age. That I  
desire to purchase from the State of California, under provisions of  
title eight of the Political Code, the following described land in San  
Bernardino County, to wit: N  $\frac{1}{2}$  SW  $\frac{1}{4}$  & N  $\frac{1}{2}$  of SE  $\frac{1}{4}$  & SW  $\frac{1}{4}$   
of Sec. 16, Tp. 3 N., R. 4 W, San Bernardino Meridian Containing  
600 acres. That there is no occupation of said land adverse to any  
that I have. (a) That I desire to purchase the same for my own  
use and benefit, and for the use or benefit of no other person or per-  
sons whomsoever, and that I have made no contract or agreement to  
sell the same. (b) That said land is not suitable for cultivation;  
that I have not entered any portion of any lands mentioned in  
section three thousand four hundred and ninety-four of the Political  
Code (to wit, the unsold portion of the five hundred thousand acres-  
granted to the State for School purposes, the sixteenth and thirty-  
sixth sections, and the lands selected in lieu thereof), which, to-  
gether with that now sought to be purchased, exceeds (c) 640 acres.

C. P. LYNDALL.

Post Office Address: 623 West 15th St., Los Angeles, Cal. County.

Subscribed and sworn to before me this 15th day of June, 1898.

[SEAL.]

JNO. F. LYONS,

*Notary Public in and for the City and County  
of San Francisco, State of California.*

815 (a) If there is an adverse occupation, then the affidavit  
must state that the adverse occupant (giving his name) has

been in such occupation more than sixty days since the plat was filed in the United States Land Office.

(b) If the land is suitable for cultivation, then here add "That I am an actual settler thereon."

(c) If the land is suitable for cultivation, then the area to be here inserted must be three hundred and twenty acres, otherwise six hundred and forty acres.

NOTE.—If the applicant is a female, the affidavit must state "that she is entitled to purchase and hold real estate in her own name."—(Section 3496, Political Code.)

Lands belonging to the State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.—(Constitution of California, Article XVII, Section 3.)

Any false statement contained in the affidavit provided for in Section three thousand four hundred and ninety-five, defeats the right of the applicant to purchase the land, or to receive any evidence of title thereto, and if wilfully false subjects him also to punishment for perjury. Timber lands belonging to this State shall be sold for cash only; and the Surveyor General and Register of the State Land Office must make and enforce all necessary rules and regulations to prevent the sale of or issuance of any evidence of title to any timber land of the State, except on payment in cash of the full price fixed therefor by law.—(Section 3500, Political Code.)

All applications, under whatsoever Act, filed in the office of the Surveyor General, must be retained ninety days before approval, and must be approved (when there is no conflict) by the Surveyor General, at the expiration of six months, subject, however, to the provisions of sections thirty-four hundred and six and thirty-four hundred and seven of this Code, and all unapproved applications which have been on file over six months, wherein the approval has not been demanded, or wherein the contest has not been referred to Court, or a demand made for an order of reference, as provided in section thirty-four hundred and fourteen of the Political Code, shall be null and void.

This Act shall take effect on the first day of August, eighteen hundred and eighty-five, and the Surveyor-General shall give notice to each applicant to be affected thereby, by sending to said applicant, or his attorney, a copy of this Act.—(Section 3498, Political Code.)

Read your application carefully.

(The following is endorsed on the back of the foregoing application.) Cert. # 14449 Feb'y 24th 1899. Patent # 9875 Feb'y 13, 1900. Application No. 6303. Los Angeles Land District. N  $\frac{1}{2}$ , SW  $\frac{1}{4}$ , N  $\frac{1}{2}$  of SE  $\frac{1}{4}$  and SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$

Sec. 16, Tp. 3 N., Range 4 W., S. B. Meridian. Containing 600 acres. C. P. Lyndall Applicant, 623 West 15th St. Los Angeles. Received and Filed July 5, 1898. M. J. Wright, Surveyor General. By C. A. Bump. Approved Dec. 31, 1898. M. J. Wright, Surveyor General.



*Affidavit of Character of State Lands.*

STATE OF CALIFORNIA,

*City & County of San Francisco, ss:*

J. C. Bunner being first duly sworn deposes and says: That he is by occupation a surveyor and engineer and has traveled extensively over the State and is familiar with the location and character of the following named school sections, to wit:

- 6603 L. A. Section 16, T. 3 N., R. 4 W., S. B. M.
- 6602 L. A. Section 36, T. 3 N., R. 22 W., S. B. M.
- 12400 S. F. Section 36, T. 9 N., R. 22 W., S. B. M.
- 12402 S. F. Section 16, T. 9 N., R. 23 W., S. B. M.
- S17 12406 S. F. Section 36, T. 9 N., R. 23 W., S. B. M.
- 12403 S. F. Section 16, T. 9 N., R. 24 W., S. B. M.
- 12404 S. F. Section 36, T. 9 N., R. 24 W., S. B. M.
- 12405 S. F. Section 16, T. 9 N., R. 25 W., S. B. M.
- 12401 S. F. Section 36, T. 9 N., R. 25 W., S. B. M.
- 2379 Ind. Section 16, T. 9 S., R. 30 E., M. D. M.
- 2363 Ind. Section 16, T. 9 S., R. 29 E., M. D. M.
- 2363 Ind. Section 16, T. 9 S., R. 30 E., M. D. M.
- 2357 Ind. Section 16, T. 21 S., R. 37 E., M. D. M.
- 2385 Ind. Section 16, T. 24 S., R. 33 E., M. D. M.
- 4341 Vis. Section 36, T. 14 S., R. 31 E., M. D. M.
- 4351 Vis. Section 36, T. 14 S., R. 32 E., M. D. M.
- 4351 Vis. Section 36, T. 15 S., R. 31 E., M. D. M.
- 4340 Vis. Section 36, T. 16 S., R. 31 E., M. D. M.
- 4338 Vis. Section 16, T. 24 S., R. 32 E., M. D. M.
- 4354 Vis. Section 16, T. 14 S., R. 28 E., M. D. M.
- 4356 Vis. Sec. 16, T. 18 S., R. 32 E., M. D. M.
- 2372 Ind. Sec. 16, T. 24 S., R. 36 E., M. D. M.

That the said lands are all rough and mountainous in character, and no portion thereof is suitable for cultivation; some of the lands can be used for grazing purposes. None of the lands could be classed as timber lands; that is to say, they have no commercial value for the timber growing thereon. Some of the lands have a scattered growth of stunted pines and other trees but this growth does not add to the value commercially or otherwise. On the contrary, the lands would be of more value for grazing purposes with the trees and brush removed.

J. C. BUNNER.

S18 Subscribed and sworn to before me this 23rd day of December, 1898.

[SEAL.]

HENRY P. TRICOU,

*Notary Public in and for the City and County of San Francisco, State of California.*

## STATE OF CALIFORNIA.

*City and County of San Francisco, ss:*

M. F. Reiley being first duly sworn, deposes and says: I am a surveyor and Civil Engineer, and have traveled over and in the vicinity of the lands mentioned in the foregoing affidavit of J. C. Bunner and am familiar with the character of each and every tract described. I have read the foregoing affidavit of J. C. Bunner and the same is true and correct.

M. F. REILEY.

Subscribed and sworn to before me this 23rd day of December, 1898.

[SEAL.]

HENRY P. TRICOU,

*Notary Public in and for the City and County of San Francisco, State of California.*

819 *Approval of Application to Purchase State Lands.*

Location No. 6603, Los Angeles Land District.

State of California, Office of Surveyor-General.

SACRAMENTO, Dec. 31, 1898.

I Hereby Certify, That in accordance with the provisions of title eight of the Political Code of California, C. P. Lyndall did, on the 5th day of July 1898, file in this office Application No. 6603 in due form, to purchase from the State of California the following described land in San Bernardino County, to wit: N  $\frac{1}{2}$ , SW  $\frac{1}{4}$  & N  $\frac{1}{2}$  of SE  $\frac{1}{4}$  & SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$ , Section 16, Township 3 N., Range 4 W., S. B. Meridian, containing 600 acres.

And it appearing that the said applicant has complied with all the requirements of the law, and that the land is not timbered land, and is subject to sale by the State of California, said Application No. 6603 is hereby approved.

The County Treasurer of said County will, within fifty days from this date, receive from said applicant the sum of Seven hundred & fifty (750.00) dollars, being payment in full for said land; or the County Treasurer will, at the option of said applicant, receive the sum of One hundred & fifty & 12/100 (150.12) dollars, being twenty per cent of the purchase money, with interest on the balance at the rate of seven per cent per annum, in advance, from the date  
820 of this approval to the first day of January next, and will also receive the sum of three dollars for a certificate of purchase, and if such payment is not made within the said fifty days, then the land above described shall revert to the State, and the said application shall become null and void.

Witness my hand and official seal the day and year first above mentioned.

[SEAL.]

M. J. WRIGHT,

*Surveyor-General.*

Location No. 6603, Los Angeles Land District.

*Certificate of Purchase.*

No. 14449.

State Land Office of the State of California.

State School Land Grant [Seal] of 16th and 36th Sections.

Price per Acre, One 25/100 Dollars.

SACRAMENTO, 24th Day of February, 1899.

It appearing from the report of the County Treasurer, That on February 18th, 1899, C. P. Lyndall paid to the State of California the sum of One hundred and fifty & 12/100 (150 12/100) Dollars, being twenty per cent of the purchase money, and interest on the balance up to January 1st, 1899, in advance, for 600 Acres of

State School Land

described as follows: N 2; SW 4; N 2 of SE 4; and SW 4  
821 of SE 4 of Section 16 in Township No. 3 North, Range No. 4 West, San Bernardino Meridian.

Now, Therefore, be it known, That the said C. P. Lyndall having made payment of said twenty per cent, and first year's interest for the above described tract of land, is the purchaser of the same, and after having in all other respects complied with the requirements of the laws providing for the sale of said lands, and the same having been confirmed to the State, and on surrendering this certificate to the State of California, the said C. O. Lyndall or his assigns, shall be entitled to receive a Patent for the same.

In witness whereof, the Register of said Land Office has hereto set his hand and affixed his Seal of Office the day and date above mentioned.

M. J. WRIGHT, [SEAL.]  
*Register of State Land Office.*

Balance of Purchase Money due, \$600 00/100.

Interest computed from December 31, 1898.

San Bernardino County.

(The following is endorsed on the back of the foregoing certificate:) Received from C. P. Lyndall, Six hundred forty-two & no/100 Dollars being payment in full on the within described tract of land. County Treasurer's Office, San Bernardino County, 30th day of December, 1899. W. H. Bowen, County Treasurer.

822 For value received, I, C. P. Lyndall of Los Angeles, Los Angeles County, State of California, to whom the annexed

Certificate of Purchase No. 14449 was issued do hereby sell, assign, transfer and grant the said Certificate of Purchase, and the land described therein, to wit: N  $\frac{1}{2}$ , SW  $\frac{1}{4}$ , N  $\frac{1}{2}$  of SE  $\frac{1}{4}$ , SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 16, Township 3 North, Range 4 West, San Bernardino Meridian unto C. W. Clarke of San Francisco, State of California, and I hereby authorize my said grantee to apply for and receive in his own name from the State of California, a patent for the said land.

Witness my hand this 18th day of March, 1899.

C. P. LYNDALL.

STATE OF CALIFORNIA.

*City and County of San Francisco, ss:*

On this 18th day of March A. D. eighteen hundred and ninety-nine, before me Henry P. Tricou, a Notary Public in and for said City and County personally appeared C. O. Lyndall known to me to be the person whose name is subscribed to the foregoing instrument, and he duly acknowledged to me that he executed the same.

Witness my hand and official seal the day and year in this certificate first above written.

[SEAL.]

HENRY P. TRICOU,

*Notary Public in and for the City and  
County of San Francisco.*

\$1.50 in Revenue Stamps.

823

Sacramento, California.

STATE LAND OFFICE,

*State of California:*

I, Victor H. Woods, State Surveyor-General and ex-officio Register of the State Land Office, hereby certify that the annexed and foregoing are true and correct copies of all original papers and documents on file in this office in the matter of the application to purchase State Lands made in the name of C. P. Lyndall and designated as Location No. 6603, Los Angeles Land District, as follows, namely

Application to purchase purporting to be signed by C. P. Lyndall.  
Affidavit of character of land.

Powers of Attorney from C. P. Lyndall to F. A. Hyde.

Certificate of approval of said application to purchase, by M. J. Wright, State Surveyor-General.

Certificate of Purchase issued by M. J. Wright, State Surveyor-General, on said location, and assignment thereof to C. W. Clarke.

In witness whereof I have hereunto set my hand and affixed my official seal this 12th day of April, A. D. 1904.

[SEAL.]

VICTOR H. WOODS,

*Surveyor-General and ex-Officio  
Register State Land Office.*

Witness was then shown the papers in application to purchase No. 6737, San Francisco Land District, and his attention called to

the application to purchase, and he was asked whether the address of H. Raymond was in his handwriting. He answered, it was not. I don't know whose handwriting the signature "H. Raymond" is. I have seen Schneider write, and have received letters from him. I have answered those letters, and have received answers to my letters.

"Q. I will ask you whether or not, in your opinion, that is not Mr. Schneider's handwriting? A. There is some slight resemblance to it, but it is not his ordinary handwriting."

I have never, to my recollection, had any conversation with Schneider in regard to any man by the name of H. Raymond. Never had any conversation with Hyde about H. Raymond. I never authorized anybody to have letters or papers addressed to H. Raymond in my care; that is to the best of my recollection and knowledge.

The other parts of the written matter—the description of the lands, Los Angeles at the top, San Francisco, and H. Raymond's name at the beginning—I would say are in Mr. Schneider's handwriting. No mail, to my recollection, ever came to me in the name of H. Raymond. June 27, 1899, I resided at 1211 Sentous Street, Los Angeles, California. June 15, 1898, I resided at 623 West 15th Street.

The application to purchase No. 6737, in the name of H. Raymond was then offered in evidence.

#### Cross-examination.

By Mr. WORTHINGTON:

You did not understand me to say that one of those signatures which purport to be mine is not mine—they are all mine.

825 It was a little over a year ago that my attention was first called to these matters, and I attempted to recall what happened. I was served with a subpoena to appear here. I did not come. I didn't see these papers until yesterday. I forgot all about it until yesterday, so far as signing these papers is concerned. The papers were first shown me yesterday.

The only reason which leads me to say I was in Oakland at that time is the fact that in signing the application I gave my address as East Oakland, and the capital "E" of the word "East" is in my handwriting, and the last letter of "Oakland", "d", is in my handwriting. The reason the "15th Street" is in my handwriting is that I was then living on "15th" Street in Los Angeles. Mr. Schneider was living on 15th Street in Oakland. Don't recall what conversation I had with Schneider about this. Don't remember definitely where it was. These papers help me to fix it. I was in Oakland at that time. Can't recall the conversation with him before I signed the papers. Independently of these papers, I was positive that I had not signed such papers. I was shown the papers yesterday, and I would have sworn that I had not signed them. I had absolutely forgotten all about it. No question but what my signatures are genuine.

When I went to San Francisco in 1898, I stopped at Oakland. I stayed with Schneider when I made these trips. Oakland is just across the bay from San Francisco. My business was in San Francisco, and I went over there every day. Went to my place  
826 of business. Have no record of what I was doing there. Have to depend on my memory.

I have a record of when I went there in January, 1898. That would not show where I went from hour to hour during the day. I met lots of people in 1897 and 1898 whom I have forgotten now. (This question in relation to Tricon, the notary.)

The place where I usually transacted my business in San Francisco was at 310 California Street. That is about a block and a half from Montgomery and California Streets.

I recognize the heading on the Raymond paper, "Los Angeles" and the words "State" and "San Francisco" just below, and the "H. Raymond" in the beginning of the paper, and "Los Angeles" are in Schneider's handwriting. My opinion is that the signature "H. Raymond" does not look like Schneider's ordinary handwriting. It does not look like it, but it is the general trend of it. I say it does not look like his handwriting. In my opinion, I would say no, that the signature "H. Raymond", was not in Schneider's handwriting.

By Mr. CAMPBELL:

Some time during the year of 1907, a man purporting to be in the employ of the government called on me about these transactions. I made a statement to him. It was reduced to writing. I signed and swore to it. In that statement, I said that so far as I know I had never signed any of these papers whatsoever.

827 "Q. You stated, this morning, that on yesterday you would have sworn that you never did sign a paper? A. Well, with the same reservation, yes sir.

"Q. But you did not make that reservation this morning? A. No.

Then I testified that until I saw this paper and recognized my signature upon it, I would have said that to the best of my recollection I did not sign a paper of that kind and character. But today I am able to recognize my signature. I have a very faint recollection of when the paper was signed.

After the first subpoena was served on me, I began thinking about the case, and my wife and I were talking it over, and I asked her if I had ever said anything to her in connection with the signing of these papers, and she said "I think you told me that you did sign some paper." Since then, I have been trying to fix positively in my mind the time at which these papers were signed, and I have a faint recollection as to when they were signed. I am positive I did not go before a notary. I did not talk to my wife about that.

*Edward E. Garrett.*

Direct examination.

By Mr. BAKER:

Land attorney; reside at Boise, Idaho. In 1897 and 1898, was Receiver of public moneys. I was Receiver of the United States Land Office at Boise from November, 1898, until January 23, 1908.

Met Benson a number of years ago, in the spring of 1899, in the United States Land Office at Boise. At that time he called at the Land Office with reference to filing some forest reserve lien selections, commonly called scrip. It was a new sort of filing. That is at that time we never had had any selections made. He appeared with reference to the law, and discussed it. The question of fees was discussed. It was pointed out that there was no provision in the law for the payment of fees. He said that he and those he was representing were willing to pay such fees as we got for filing upon lands. It was pointed out to him that that could not be done.

Later he called, and at his request was referred to some attorney who practiced before the Land Office. He never referred to any defects in his land scrip. Later the question arose as to what proportion of the base to be used in the filing of the selections. A regulation shortly after that time was issued requiring that the entire base be selected at one and the same time; and later some selections made through Benson were only for a portion of the base, and our office rejected it; and in the course of the appeal it was pointed out that the balance of that base had been filed in other offices in part, the selections for part of the base had been filed, and that this selection presented at our office was for the completion of that base. Our decision in rejecting it was sustained. There were a large number of selections made in our District through Benson, principally in the name of the F. A. Hyde Company, C. W. Clarke, Frisbee, the Ready Estate. Can't name them all.

I can't remember any specific statement by Benson that it was worth my while to be friendly with him.

Cross-examination.

By Mr. CAMPBELL:

That was a new law up there about lien selections. Presented for the first time by Benson. As I understand it, no provision was made for the payment of fees. Benson said he was willing to pay same fees as were provided for the filing of other papers. I told him that as the law did not provide for it I did not feel inclined to take it, and that was all that was said about money.

The applications Benson filed were forest lien selections. The lien land selected was within our district. Deed for the base land and the abstract of title was filed in our office. The land for which

they wanted a title from the government was within our land district. The school land was within forest reservations; and he presented an abstract of title and a deed of relinquishment to the government, and asked us to file them, and a paper which pointed out the particular portion of land within your land district which he sought, we will say, to trade for his school lands. That was about it. Later he wanted to select one portion of 640 acres. It was rejected; they appealed; and the decision was sustained. That is all there was about the business.

By Mr. WORTHINGTON:

Benson afterwards presented some selections in the name of F. A. Hyde and Hyde & Company and in the name of C. W. Clarke. As a rule, these cases went through. When they went through, the papers came to the General Land Office in Washington. In all cases, except where they were rejected, and I handed the papers back in the regular course of business, the papers would now be on file in the General Land Office. That would apply to all those in the name of Clarke that were not rejected. Don't remember of any rejections except the case I spoke of. Quite possible there were. It is true that when the business was first started under the Act of 1897 selections were accepted for only a part of the amount of land the person applying was entitled to. Don't remember when the regulation was passed requiring the party to make selection for all he was entitled to. Some time in the spring of 1899.

Don't remember in whose name this case was where the rejection occurred. It was one that Benson was handling. I don't remember the names.

I know of no specific case in the name of Hyde or Hyde & Company or Clarke that did not go through.

Redirect examination.

By Mr. BAKER:

Could not testify from what State the base came in the case that was rejected.

831 "Running maximum" is whether the office is running up to the maximum salary of \$3,000 a year. In regard to the fees, Benson asked if we were running up to the maximum, and as I recalled, in explanation of his statement, he thought it was unfair to officers who were not getting the maximum salary to require them to do this additional work without compensation, and consequently he was willing to make this additional payment. That is the explanation that was made. No fees were ever arranged for lien selections, but about that time the office was running maximum. It would have made no difference to the officers themselves.

The first selections Benson filed were made in behalf of a man named Hall, as I understand it, who was representing a railroad company in the extension of a short line, or something of that sort. I don't think that any of that base was in the name of F. A. Hyde or F. A. Hyde & Company.



Direct examination.

By Mr. BAKER:

Reside in San Francisco. For nine years have been notary public. Resided in San Francisco for sixteen years. My office was on Montgomery Street. Was appointed January, 1899. My office was about a block away from the office of Hyde and Benson.

I know Hyde. Became acquainted with him in 1900, or latter part of 1899. I know Benson; think I became acquainted with him in 1902.

Commenced to do Hyde's notarial work in 1900. Was running an account with him. Would not be paid each time I took an acknowledgment. The parties would come down to my office with papers, sign them and swear to them or acknowledge them, and I would keep an account of that. Applicants for lands. Did no other business for Hyde. Papers were often sent to me by Hyde, and he would telephone me that they were all right, and I would take them and put the acknowledgments on them, without the people appearing. These were office papers—his own signature, the signatures of people I knew very well.

"Q. Tell us something about those signatures you took, that is, without the parties being present. A. F. A. Hyde's.

"Q. Who else? A. I don't remember anybody else."

I always called on Mr. Clarke and Mr. Rattenberry. Went to Mr. Hyde's office nearly every day. Would take acknowledgments and affidavits there of people that were applying for land. In isolated cases, I have taken an acknowledgment or affidavit to a paper when the person would not appear. This was where I knew the people well that brought the papers to me, and stated that he saw the parties sign. I took such acknowledgments. Mr. Hyde himself never at any time guaranteed the signatures of anybody. Hyde would telephone me that they were all right. I took them over the telephone from the people themselves. That was not very often. Yes, I have taken acknowledgments in regard to matters of Mr. Hyde when the people did not appear before me, where they came over the telephone.

I have done work for Benson. I went to his office nearly every day and took acknowledgments and affidavits, a great many times persons and clerks would come from Benson's office with papers. The persons did not need to be presented. They were not papers that were signed to by anybody. They were certified copies of letters and documents.

At times I went around and took the affidavits of applicants living in tenement houses for George Perrin. Benson did not in all cases pay for these. In a great many cases, Perrin paid me. In some cases, Benson paid me. So long ago, I don't remember. I went around to these houses. There were men there that signed these applications and swore to them and that was all there was to it. Applications for school lands. It must have been in 1903.

"By Mr. BAKER:

"Q. Now, Mr. Burnes, I want you to explain exactly the class of papers where you require the people to come before you, and the class of papers where you did not require the people to come before you, to the jury, so they will understand. A. In all the 834 acknowledgments I made, the people appeared; and in other cases, cases of applications, where there was a party that I knew very well that would state that he saw these people, that they would appear before me at some other time, they could not get down just at this particular time, I affixed my jurat to them."

I never called upon Mr. Hyde to find out in regard to a number of papers that were sent me whether the people were real or fictitious; never telephoned him to that effect. He always sent a memorandum in an envelope—"Go and see these people," with their addresses on, "and take their acknowledgments."

I don't know Elizabeth Dimond personally. I took her acknowledgment to a paper. She was in my office. She was a woman about middle age, a dark brunette, medium height. I think she acknowledged a power of attorney before me. It was when I was first appointed notary in 1899. I think she signed a deed in 1899 or 1900. She came into my office by herself. She had the power of attorney. Nothing else that I can remember. She walked into my office with a paper in her hand, laid it down, and said "This is a power of attorney; I wish to acknowledge it." I did not examine it. Don't know who it was for, or anything else. Can't remember that I ever took an acknowledgment of Elizabeth Dimond for Mr. Hyde. That did not go into my account with Mr. Hyde. Did not have an account with Hyde until 1900—I could not recall whether after 1900

I took any acknowledgment or affidavit of Elizabeth Dimond. 835 I could not remember that I ever took an affidavit or acknowledgment of Elizabeth Dimond that went into the account with Hyde. I saw Elizabeth Dimond two or three times. I think the first occasion when she signed the power of attorney, the second when she signed the deed, the third I think she signed an affidavit. Could not tell how far apart. Made no effort to find out who she was other than her statement. Each time she brought the instrument with her. I charged her. She paid it herself. Last time I saw her was in 1900 or 1901. Could not tell that. Not sure of the dates, but am sure she was in my office in 1899, because I was not running any account with any land lawyer at that time. Can't recall whether she was in my office at any time after I was running an account with a land lawyer. She might have been. Have not seen her since the last time she was in my office. Don't know the nature of the deed, nor the sort of property. Could not remember whether it had any relation to Hyde's business. She did not sign the paper in my presence. It was already signed. Could not remember whether the power of attorney or the deed were in type-writing or writing. The affidavit, I think, was typewritten all the way through, and I don't believe it had any reference at all to land. I think it was something in a civil suit. It might have been a year

after the first time that I saw Elizabeth Dimond again. Might have been more. Might have been less; hardly think it was.

I have been here since the 13th day of April, and have not had any conversation at all with Mr. Hyde.

"Q. Have you had any conversation with anybody connected with this case? A. Not a soul. Oh, about the case——

836 "Q. Yes. A. You bet I have. I have been talking about it all the time."

I have never seen any of the counsel for the defense.

"Q. I will ask you whether or not before you left San Francisco you had any conversation with Mr. Hyde? A. I never met Mr. Hyde until I met him here in Washington, since a week after the fire in San Francisco.

"Q. I will ask you who you have talked to about it—have you talked to anybody? A. Not a soul.

"Q. Not a soul? A. Not a soul.

"Q. No. A. That is, about this case."

Witness was then shown Exhibit No. 410, and was examined in respect thereto as follows:

"Q. I will ask you whether or not you have any memory of Elizabeth Dimond appearing before you and making an affidavit to that paper? A. I have.

"Q. Is that the person you referred to here as Elizabeth Dimond? A. Yes, sir.

"By the COURT:

"Q. Is that the affidavit you referred to? A. No, sir; that is not the affidavit. The affidavit was in a civil suit of some kind.

"By MR. BAKER:

837 "Q. Then you saw her more than three times? A. No—well, I might have. It might have been four times. I don't know. I know that I have seen her—she signed a paper or an affidavit besides that one. I don't remember this at all. I know she signed an affidavit in a civil suit, too, and I took her acknowledgment on a power of attorney, and I also took her acknowledgment, I think, on a deed. That would be four times.

"Q. I ask you whether or not you have any recollection of this paper? A. No, I have not. I recognize it as my signature.

"Q. I ask you, as to that paper, whether you have any recollection of it at all? A. No; I have not. I don't remember that paper at all.

"Q. Let me see if I got your answer aright. As I remember, you do not remember the occasion of Elizabeth Dimond coming— A. On this?

"Q. Yes. A. Oh, yes. She appeared before me. There is no doubt about that.

"The COURT: He means the one you just saw.

"The WITNESS: What is the question?

"By Mr. BAKER:

"Q. I will ask you whether or not you have any knowledge or memory as to Elizabeth Dimond appearing before you on this occasion? A. No, but I certainly believe she did.

"Q. I am not asking you for your belief. I am asking whether or not you have any— A. Recollection?

"Q. Recollection of it. A. I haven't any recollection of  
838 that paper; no.

"Q. And on looking at the paper you have not any recollection of it? A. I know she appeared before me, because I see the signature.

The COURT: Of course that is merely a matter of reasoning.

"By Mr. BAKER:

"Q. I saw looking at the paper, that does not refresh your memory? A. Not at all."

(The Exhibit No. 410 referred to is dated June 6, 1901.)

That is my signature to Exhibit 411. I never read over those papers. I don't remember. That is my signature. She called and swore to it. Don't recall the incident of her calling at that time. It is dated October 13, 1902.

I don't think I know H. Raymond. Don't recall the name. Don't remember having a man of that name come before me.

Personally, I don't know anyone by the name of Morris. I have taken H. S. Morris' acknowledgment. He is the only one I can remember. There might have been more. Don't recall H. C. Morris.

Don't recall H. W. Davis. Don't recall A. H. Welsh. That is my signature to 6737—the Raymond application already offered in evidence. I have no recollection of taking the acknowledgment of  
Raymond. (The paper is dated January 27, 1899.)

839 That is my signature to application 2603—Sacramento Land District—in the name of H. W. Davis. No particular knowledge of his appearing before me. That is dated August 14, 1899.

I think I remember a man by the name of J. C. Bunner. Know George W. Perrin very well. Bunner appeared before me very often. Every paper that Perrin's name is on, he appeared before me and Benson, too. They both came down together. Didn't know Bunner as well as I knew Perrin. Saw Perrin mostly every day.

Haven't any recollection of A. H. Welch.

I don't recall H. M. Morris. I know H. S. Morris. I think I took acknowledgments for H. S. Morris more than I did for H. M. Morris. I couldn't recall that I ever took any acknowledgments for H. M. Morris.

Witness was then shown Exhibit No. 134, purporting to be a power of attorney dated June 9, 1899, from H. M. Morris to Thomas H. Burke of Missoula, Montana, and he identified his signature as notary thereon.

"By Mr. BAKER:

"Q. I will ask you what recollection, if any, you have of H. M. Morris appearing before you? A. I believe he did.

"Q. I did not ask you that. I asked you whether or not you remember taking the acknowledgment of that paper. A. I do not remember taking the acknowledgment.

"Q. I will ask you whether or not you know a person by the name of H. M. Morris. A. No, I do not.

"Q. Or ever did know anybody by that name? A. I  
840 did not.

"By Mr. BAKER:

"Q. Do you know Herbert Clarke? A. Yes; I know Clarke.

"Q. Did or did not he ever bring any papers to you to execute? A. He did.

"Q. What kind of papers? A. He brought people to my office. He brought papers from Mr. Hyde's office.

"Q. And whenever he brought papers, did or did he not bring the people with him? A. No. They were all Mr. Hyde's office papers, powers of attorney, and things of that kind, signed by F. A. Hyde himself."

Thereupon, counsel for the government asked the witness the following question:

"Q. Now I will ask you Mr. Burnes, whether or not you did not make a statement on the 5th day of February, 1907, to Thomas B. Neuhausen?"

To this question counsel for the defendants objected, unless the counsel for the government would state that they expected to show that the government was taken by surprise, so as to bring the case within the provisions of Section 1073-a of the Code of the District of Columbia.

Thereupon, counsel for the government stated that they asked the question for the purpose of showing that the government was taken by surprise.

Thereupon, by the leave of the court, counsel for the de-  
841 fendants examined the witness as bearing on the question of surprise, who testified as follows:

"The WITNESS: Since I have been here, I have talked about my prospective evidence to Mr. Baker and Mr. Neuhausen. Mr. Pugh was present, but I do not think he heard the conversation; this occurred night before last in the District Attorney's office in this building; I was there 25 minutes or half an hour; there was nobody participating or listening except Mr. Neuhausen and Mr. Baker. At that time I was not asked any questions by the District Attorney about the matter as to which I have been examined here to day; he mentioned nothing about the Elizabeth Dimond affair; he just mentioned my statement there" (referring to a signed statement previously made by the witness to the Government). He showed me these other papers that he showed me here a few minutes ago.

The statement referred to by the witness was here handed to the counsel for the defendant Hyde, by the counsel for the Government, and was, by the counsel for the defendant Hyde, shown to the witness who said that was the paper that was shown him.

"The WITNESS (resuming): I read that paper over and said that the statements in it look all right. As to the matters not involved in that statement, I was not asked anything about them—not a word."

"Mr. WORTHINGTON: I understand then the Government offers to prove that it was taken by surprise only in so far as his statement made to day differs from this." (Meaning statement shown to witness.)

"The COURT: I so understand it.

812 "Mr. BAKER: Yes. There are some other questions that he answered and that I want to ask him about, that we didn't interrogate him about the statement, and if he didn't make certain answer."

"The COURT: The point is this. He is now about to ask the witness if he made this statement in writing, and to call his attention to certain parts of it which it is thought are in contradiction of his present testimony. Be particular to ask him only about those parts which are in conflict with what he has said, and which you may think in conflict."

Thereupon the witness being further examined by Mr. Baker, he said:

"By Mr. BAKER:

"Q. I will ask you whether or not you did not make a statement to Mr. Neuhausen on the fifth day of February 1907? A. Yes, sir; I did.

"Q. Was that signed by you? A. Yes, it was signed.

"Q. I show you——

"The COURT: That is the paper Mr. Worthington just showed him. That identifies it sufficiently.

"By Mr. BAKER:

"Q. It is the one Mr. Worthington just showed you? A. Yes.

"The above-mentioned paper was marked No. 412."

"By Mr. BAKER:

"Q. I will ask you whether or not you did not swear to that statement? A. I did.

813 "Q. I will ask you whether or not the evening before last you read that statement over? A. Yes.

"Q. And did or did you not have any conversation with me about it? A. Yes.

"Mr. WORTHINGTON: I object, unless the District Attorney states that he offers it for the purpose of showing to the jury that the witness is not a credible witness under the section your Honors refers to.

"The COURT: He already states that he offers it under that section. I have given him the number of the section.

"Mr. BAKER: Yes.

"The COURT: If he offers it it is offered under that section.

"By Mr. BAKER:

"Q. I will ask you whether or not in that statement you did not state that 'the bulk of the papers that were presented to me for me to attach my jurat related to State Lands and were principally powers of attorney and deeds to F. A. Hyde & Company, to C. W. Clarke, and from C. W. Clarke and wife, and also similar papers in which the name of a lady who resided on Washington Street between Hyde and Leavenworth Streets occurred.' Q. That is right.

"Q. Did or did not you further say, 'Herbert Clarke, an employé of Hyde's office, and other clerks in his employ, brought those papers to me. Frequently the purported affiants appeared before me, 844 and when they did not I was personally assured by F. A. Hyde that the parties actually existed.' A. That is right.

"Q. Is or is not that true? A. That is true.

"Q. Did or did not you further say, referring to your work with John A. Benson, 'the first papers which I attached my jurat to were paid for by the applicants themselves, and I saw them going into Benson's office'? A. True.

"Q. 'A little later Benson sent a clerk to my office and asked me to take some acknowledgments in his office. The applicants were present at that time: In quite a number of cases I took the word of Benson or of his clerks, as the case might be, that the parties whose signatures purported to be on the papers had actually signed them in person.' A. Yes; they were very rare cases, though.

"Q. You say here in your affidavit, 'In quite a number of cases, Is or is not that true? A. No; there were not a great number of cases.

"Q. Did or did not you state that that was true? A. I did; yes.

"Q. I will ask you whether or not in the conversation that you had with Mr. Neuhausen and myself, after you read over that paper, you were not asked this question: 'When you stated that Mr. Hyde had to vouch for them if they did not appear before you'——. A. That is true.

"Q. Did I not say to you, 'How did he vouch? Did he come in person', and did you not say no, that you called him up 845 over the telephone, or he called you up over the telephone? A. That is right.

"Q. And said that the papers were all right, and to go ahead and take the affidavits? A. Right.

"Q. Or the acknowledgments? A. Right.

"Q. That is correct; is it? A. That is correct.

"Q. You were shown the papers we showed you here, the applications for school lands, or some of them, were you not? A. Three of them.

"Q. Do you remember what three? A. Yes, you handed them to me a few minutes ago.

"Mr. WORTHINGTON: When you say he was shown them, do you mean in your office?

"Mr. BAKER: In my office.

"The WITNESS: Yes, they were shown me in the office.

"By Mr. BAKER:

"Q. That is, Davis, Welsh and Raymond? A. Yes.

"Q. And were you not asked whether or not those persons appeared before you, or whether you took the affidavits? A. Yes.

"Q. I will ask you whether or not in the conversation after we went over the statement, or talked to you about the statement, you were not shown the papers of H. Raymond, A. H. Welsh, and H. W. Davis, and were asked the following question: 'Did any one of these persons appear before you, or were the papers sent to you by Mr. Hyde,' and did you not reply that you were unable to state whether or not the papers were sent by Mr. Hyde, or that the parties appeared before you?

"The COURT: I think in fairness you should first ask him now whether he can say how that was.

"By Mr. BAKER:

"Q. I will ask you whether or not you can state whether H. Raymond appeared before you, or whether you took the affidavit upon Mr. Hyde vouching that Mr. Raymond was all right, and a real person? A. I said to the best of my knowledge and belief they did appear.

"The COURT: Ask him as to the other two.

"By Mr. BAKER:

"Q. I put the same question to you as to A. H. Welsh and H. W. Davis. A. To the best of my knowledge they both appeared.

"The COURT: Now, you may ask him.

"By Mr. BAKER:

"Q. I will ask you whether or not in the office the other evening, in conversation with Mr. Neuhausen and myself, you were not shown these three papers and asked whether or not these people appeared before you, or whether you took the acknowledgment upon the suggestion or guarantee of Mr. Hyde; and on that occasion did you not answer that you were unable to say? A. I didn't have any—I couldn't tell whether they appeared or not. To the best of my knowledge and belief they did.

"Q. What I am trying to get at is, did you not say to us that you could not tell? A. I couldn't remember.

847 "Q. Whether they appeared or not, or whether Mr. Hyde? A. That I couldn't remember.

"Q. Now, I ask you whether or not—

"The COURT: The question is whether you were asked that question.

"The WITNESS: Yes.



"The COURT: And you stated that you could not tell?

"The WITNESS: I couldn't remember.

"By Mr. BAKER:

"Q. I will ask you whether you can remember whether any one of these three personally appeared before you? A. I couldn't remember."

Counsel for the Government then exhibited to this witness certain papers,—applications to purchase California State School Lands involved in List C of the bill of particulars and situated within the limits of certain then existing temporary withdrawals for proposed forest reserves in Northern California, namely, the Klamath River, the Mt. Shasta, the Lassen Park, the Diamond Mountain, the Stony Creek, and the Feather River proposed forest reserves, as already shown in the early part of the evidence,—and he testified in relation to said papers as follows:

I have no particular recollection of Fred Holmes. I don't know him, or anybody by that name.

On application No. 2164, dated October 8, 1902, and purporting to be signed by Fred Holmes, my signature as notary appears. To the best of my knowledge and belief he appeared before me. I have no recollection at all on the subject. I don't know anyone by that name.

848 I don't know Frank Shaw. I do *not* D. C. Hoover. I am not very well acquainted with Shaw, but I know Hoover very well. I don't recollect Shaw, but I do know Hoover. I have no recollection of either of these men appearing before me and making affidavit to the paper shown me. I don't know any person by the name of Mary M. Harris. I never heard of that name before. Witness is shown application to purchase No. 2154, in the name of Mary M. Harris, dated October 6, 1902, and was asked whether his signature appeared thereon, and answered: "Yes." I have no knowledge at all of Mary M. Harris appearing before me.

"Q. I show you the affidavit, and ask you whether or not anybody appeared before you to make that affidavit? A. Mr. Hyde.

"Q. I will ask you what knowledge you have that Mr. Hyde appeared before you? A. I have no knowledge of him appearing, but I know I took that affidavit.

"By the COURT:

"Q. You mean that you know you certified it? A. I know I certified to Mr. Hyde's signature.

"Q. Do you not remember his coming before you? A. No; I don't remember it at all.

"By Mr. WORTHINGTON:

"Q. Perhaps I did not catch that. What is the question?

"By Mr. BAKER:

"Q. I show you the affidavit in question, signed Mary M. Harris,

by F. A. Hyde, attorney-in-fact, and ask you what knowledge you have that Mr. Hyde appeared before you? A. I have no knowledge at all."

I know James McGuire and L. A. Hanson. My signature as notary appears on the affidavit by them accompanying those papers. They appeared before me very often. I have no recollection at all of them appearing before me in regard to this paper.

I don't know anybody by the name of Donald McDougal. Witness was then shown application to purchase No. 2171, in the name of Donald McDougal, and he identified his signature as notary thereon. I have no recollection of Donald McDougal appearing before me. The same is true of the affidavit of abandonment of location by McDougal. I have no recollection of his appearing before me.

I don't know anybody by the name of John Pair. Witness was then shown application to purchase No. 2172, dated October 28, 1902, in the name of John Pair, and he identified his signature as notary on the application, and further said: I have no recollection of his appearing before me. I know P. F. Nolan and B. E. Bliss. I don't know who they were; but they were people, I remember, that came into the office and swore to these papers.

I don't know William J. Preston, and don't remember anybody by that name that came before me. I did not always examine papers when I affixed my signature thereto. Never examined them.

I never in my life signed any papers that were in blank. Witness was then shown application to purchase No. 2039, in the name of William J. Preston and dated September 23, 1902, and he identified his signature as notary thereon, and further said he had no knowledge at all of Preston ever appearing before him.

His attention was then called to the power of attorney in the case and he identified his signature as notary on that paper.

"Q. I will ask you whether or not you did not sign that paper while it was in blank? A. I never noticed it if I did.

"Q. I will ask you whether or not it is not in blank now? Q. As far as the date is concerned, yes.

"Q. And the attorney? A. The attorney is not mentioned there.

"Q. So that when you say you never signed papers that were in blank, you were mistaken, were you not? A. I overlooked that one, sure."

I don't know anybody by the name of Samuel Warden. Nobody by that name ever appeared before me. Witness was then shown application to purchase No. 2130, dated October 4, 1902, in the name of Samuel Warden, and he identified his signature as notary thereon.

I know William F. Benson. He is a brother of the defendant John A. Benson. I don't know of his having any business connection with John A. Benson.

I don't know Emile Weiss. I don't remember any person of that name ever appearing before me.

I have no recollection of such a person as Ray Donnelly, or of his ever having appeared before me. Application to purchase No. 2024 was then exhibited to the witness and he identified his signature

ture as notary thereon. I took a great many affidavits and  
851 acknowledgments for Mr. Hyde and Mr. Benson, and for all  
the land lawyers that were down in our block. Some of them  
were William A. Stewart, William A. Stewart, Jr., and John D.  
Ackerman. I took a great many for these other men. I could not  
tell from the papers for whom I took the acknowledgments. The  
abandonment of the location shown me in the Ray Donnelly papers  
has on it my signature as notary. I have no particular remem-  
brance of Ray Donnelly appearing before me. I have no memory  
in regard to it; none at all. They came into the office and signed  
the papers and went away. I wouldn't swear positively that Ray  
Donnelly came, because I don't know the party. The paper is  
dated May 13, 1902.

At this point the dates of certain temporary withdrawals of lands  
for proposed forest reserves in Northern California, as proved by  
the witness Ithamar P. Berthrong, in the early part of the evidence,  
were stated to be as follows:

Temporary withdrawal for proposed Klamath River Forest Re-  
serve, October 11, 1902.

Temporary withdrawal for proposed Mt. Shasta Forest Reserve,  
October 17, 1902.

Temporary withdrawal for proposed Lassen Peak Forest Reserve,  
October 23, 1902.

Temporary withdrawal for proposed Diamond Mountain Forest  
Reserve, October 22, 1902.

Temporary withdrawal for proposed Stoney Creek Forest Re-  
serve, August 14, 1902.

Temporary withdrawal for proposed Feather River Forest Re-  
serve, December 24, 1902.

852 In this connection it was admitted by counsel for the re-  
spective parties that the temporary withdrawal of lands  
means the withdrawal of lands from settlement with the intention  
of making a forest reserve, or likely to make a forest reserve.

(The description of the lands in List C of the bill of particulars,  
when compared with the letters of temporary withdrawals for the  
aforesaid proposed forest reserves (Exhibits No. 4, No. 5, No. 6,  
No. 7, No. 8, & No. 9), and with the map (Exhibit No. 12), which  
said letters and said map were introduced in evidence during the  
examination of the witness Ithamar P. Berthrong, show that the  
lands described in said List C of the bill of particulars are situated  
within the limits of said temporary withdrawals for proposed forest  
reserves. It is not deemed necessary therefore to here insert said  
letters and map.)

The said proposed forest reserves were not established as perma-  
nent forest reserves until after the repeal of the forest lien selection  
acts of June 4, 1897, and June 6, 1900, heretofore referred to in this  
bill of exceptions, which repeal was by act of March 3, 1905, 33  
Stat., 1264.)

This witness was then shown by counsel for the Government the  
papers in a number of other applications to purchase from the State  
of California school lands within the limits of the aforesaid pro-

posed forest reserves, and described in List C of the bill of particulars, the claim of the Government as to such applications and those already shown to the witness being that the same were filed in the State Land Office by the defendants for the purpose of getting the school lands and using them in exchange for other lands 853 under the act of June 4, 1897, whenever the said proposed reserves should become permanent.

Counsel for the defendants objected to any evidence as to said applications to purchase on the stated ground that the school lands in said List C were never used or attempted to be used as base lands for selections under the act of June 4, 1897; and that some of the applications were never completed.

To this counsel for the Government answered that the evidence as a whole would show that the original intention in filing the said applications was to obtain the school lands for selection purposes under the act of June 4, 1897; that the original purpose was to use the said school lands in exchange for other lands under the said act when the said proposed forest reserves should be created; and that the only reason the defendants did not go ahead and complete the applications, if they did not, was because the said proposed forest reserves were not established until after said act of 1897 had been repealed.

The Court held that the fact that the applications did not go to completion did not make the evidence inadmissible. If the defendants expected there would be forest reserves there, and filed the applications for these school lands for the purpose of using the lands in exchange with the Government, evidence as to the applications would be admissible as showing the steps taken before the repeal of the act of 1897, and it would make no difference if the reserves had never been created.

The papers in 47 cases of applications to purchase school 854 lands mentioned in said List C of the bill of particulars, the applications purporting to be signed by different persons and bearing the notarial certificate of the witness that the persons had appeared before him and sworn to the applications, were then exhibited to the witness and he testified that he had no recollection of any of the persons whose names were signed to the applications ever having appeared before him to make affidavits thereto. As to the affidavits relating to the character of the land in nine of the cases he testified that the affiants did not appear before him; and as to the assignments by the applicants in a number of the cases he testified, as he did with respect to the applications, that he had no recollection of any of the parties ever appearing before him to acknowledge the same. The papers in said cases were offered in evidence by counsel for the Government.

The WITNESS (resuming): All my books were destroyed during the San Francisco fire. I did a great deal of notarial business from August 1902 and during the year 1903. I don't know how I could fix the amount of the number of papers I signed. I would get 25 cents each for taking acknowledgments to affidavits for school lands; and the same for affidavits as to the character of the lands and the

abandonment of locations. In the years 1902 and 1903, besides taking acknowledgments to affidavits in relation to these school lands, I did all kinds of business for lawyers—wrote up papers, bills of sale, and deeds. In those years I was attending to the notary business alone. My income averaged, I think, from \$300 855 to \$400 a month in 1903. Don't think it was quite so large in 1902—about \$300 a month. Could not give an idea of how many papers I acknowledged. More than thirty a day perhaps, and some days I signed up forty to forty-five papers. The work was not all in my office; it was scattered around in different offices. I would acknowledge from twenty-five to thirty papers a day in my office. I signed six hundred deeds one night for Mr. Hyde. I think this was in 1903. To just take an ordinary day I would usually get from Mr. Hyde four, five or six papers a day. Benson's business ran about the same.

I remember that W. F. Benson and S. A. Hanson, whose names appear on the affidavits as to the character of the lands, always came with their papers when they swore to them. I never took an affidavit of W. F. Benson when he did not appear before me. Have taken as many as four, five, six, ten affidavits by W. F. Benson in a day; and the same about Hanson.

I now spell my name Burnes; used to spell it Burns. The first year that I was appointed a notary, my commission was made out Burns. Then I was reappointed the following year, and my commission was spelled properly—Burnes.

I had two notarial seals—one at my office and one at my house or at Mr. Benson's office. I may have brought my seal over there to their office.

I had monthly settlements with Hyde and with Benson. Could not remember the amounts that would be due me. Couldn't even approximate. When Perrin acknowledged a paper before me or made an affidavit, he often paid me himself.

When an applicant for school land would come before me he would pay, himself, too; but that was only on very rare occasions. 856 When they wouldn't send down any note or slip, you know, I would charge it to them. But when the parties came in the office by themselves, I would charge the parties.

I could not remember the amount given by Hyde or Benson in any one month in the years of 1902 and 1903. As to Mr. Hyde I don't think my bill ran as high as \$100 a month; I can't remember. As to Mr. Benson it did not run that high; and I don't think as large as \$75 a month. The six hundred deeds I referred to was something unusual. Hyde was deeding back the lands to the State of California, I think. Hyde and Benson always paid me in money—cash.

I know Herbert Clarke. He brought papers to me to acknowledge.

Mr. Perrin, if you could call him a clerk, in Benson's office, used to bring his own papers all the time. The papers would come from Benson's office, and I would go over to Benson's office. Nobody else from Benson's office brought papers to me. William F. Benson always came himself with his papers, and brought them back to Ben-

son's office. There were lots of times that these papers were signed right in Benson's office. The papers that William F. Benson brought were all as to the character of the lands—always. Lots of times those papers were signed in Benson's office. William F. Benson and Perrin would be there, and the clerks. Can't recall that Levinson ever brought any papers to me.

Miss Glover always sent her papers over by Perrin. When  
 857 Perrin didn't pay I always charged it up to Benson and Benson settled for that. I went out with Perrin sometimes and took affidavits to school land applications, but he never brought the papers to me. Would go out with Perrin in the evenings, in 1902 and 1903. I went out with Perrin to different places where people signed applications for lands. No powers of attorney. Applications were all filled out when they were signed and sworn to. I never saw any money passed to the applicants. Went out with Mr. Perrin in 1902 perhaps three or four times. Got about a dozen applications. Mr. Perrin took them; Mr. Perrin paid me. Went out a couple of times with Perrin in 1903. Went around town and took applications in different places. Went to a tenement house once on Sacramento Street. That was a lodging house. Took some applications there; perhaps half a dozen. The applicants were not paid. When I went in the people would be there and appeared to have an appointment with him. It wouldn't take any time; simply signed their names and swore to them. Don't recall the names of any of these people. Didn't sign more than one paper that I can recall. I think it was just the application. Didn't take my seal with me; put it on the next day. I put my seal on at Benson's office. Know some of these people by sight; not all of them. These people were small storekeepers. Couldn't recall what the people did who were in the lodging house. I don't remember going to Market street or Mission Street to lodging houses. These people appeared twice before me in a good many cases. I remember that. The people that we went out to see in the evening they signed another paper of some kind in Benson's office later on. I think one paper was the application—I don't know whether the other one was a power  
 of attorney or an assignment.

858 The other day I spoke about Elizabeth Dimond appearing before me and I described her appearance to the jury. She did not appear to be a woman of refinement, but a woman who worked. That I couldn't say. You can never tell about those people; She was dressed in dark clothes. She appeared to be a woman that worked. Had very little conversation with her. The papers she brought were already signed when she brought them to me. I don't know whether she read them or not. She just acknowledged them. Didn't have any conversation with me in regard to them. I did not make any inquiry as to who she was. She was alone when she came and nobody identified her.

## Cross-examination.

By Mr. CAMPBELL:

I knew George H. Perrin very well. He was an old resident of San Francisco, a civil engineer of standing, and a man whose family was quite prominent.

The people to whom I went appeared to be friends and acquaintances of his and appeared to be waiting for him as if they had appointments with him to bring me there. I don't know what had taken place previously between Mr. Perrin and these persons. Can't say that they did not want to take up these lands for their own benefit. In 1902 got about twelve small storekeepers, and got about six at the lodging house. I don't know that the six people we got at the lodging house belonged to the surveying crew that Perrin had come in with, but he knew these people very well.

I have answered the district attorney that I have no recollection as to whether these people appeared before me. My jurat and acknowledgment are upon all the papers that have been shown to me. That was made by myself at the time when it purports to have been made.

"By Mr. CAMPBELL:

"Q. Mr. Burnes, do you say that these people did not appear before you and acknowledge these papers?

"Mr. BAKER: I——

"The COURT: He certainly has not said anything of that kind."

"By Mr. CAMPBELL:

"Q. What I want to know, Mr. Burnes, is whether you are able to tell the jury, keeping in mind the papers that have been shown you by the attorney for the Government, that a single one of those persons did not appear before you and either acknowledge the papers that bear an acknowledgment, or swear to the papers which appear to have been sworn to? A. No.

"Q. What *do* you say, then, is that you do not now recollect of any particular person that did appear at that particular time? A. That is the idea; I don't recollect them."

I was appointed notary in 1899, and have been shown papers from 1899 down to 1905. There were thousands of papers executed by me during that period.

During the years 1901, 1902 and 1903, I did notarial work for Hyde in 1901. I did not do any work for Benson until 1902. During that time I did notarial work for other land lawyers—William A. Stewart, John D. Ackerman, Fred Lake, B. B. Newman, M. F. Riley, Chester L. Hovey, and C. W. Slack—I don't think Slack was in business for himself until after the year 1903.

I don't think I ever took an affidavit to an application to purchase school lands that came from Benson's office without the applicant being present to swear to it, or an assignment of any of the papers

that came from Benson's office, or an abandonment, or a power of attorney. My best recollection is that I did not.

Cross-examination.

"By Mr. WORTHINGTON:

"Q. I wish you would give us, if you can, Mr. Burnes, a better idea of the number of times compared with the whole lot in which you certified to an acknowledgment of some person upon telephonic information from Mr. Hyde's office. Do I understand you to say that sometimes, with respect to Mr. Hyde's office, you would certify that a party appeared before you, when in fact he did not? A. Yes, sir.

"Q. Did you ever do that with an affidavit? A. No, sir.

"Q. Only with acknowledgments? A. It was only with an acknowledgment.

"Q. Acknowledgments to what? A. Well, I could not recall the papers just now.

"Q. So far as affidavits to applications for school lands are concerned, then, do you say that you never certified that a person had appeared before you to such an application unless he did actually come before you? A. Yes, sir."

861 I went to Hyde's office a great many times to swear people to such papers and take acknowledgments, and some times a large number of papers would come to me from Hyde's office that would be signed by somebody for F. A. Hyde & Company; and on these occasions he would ring me on the phone and acknowledge the papers. He would say "I have sent you some papers down by the boy; I want you to put your acknowledgment on them." Those would be papers signed by him and by the secretary of the F. A. Hyde Company. Sometimes he would send the boy down with papers in the afternoon. Then he would send a letter of instructions to go and call on certain people in the night time and take their acknowledgments, and I would do it that way.

They always sent me to C. W. Clarke's home, and Mrs. Clarke too, and I went to Mr. Hyde's house many, many times to have his wife sign.

As far as I knew, the business I got from Hyde's office and that which I got from Benson's office were entirely separate—two separate bills made out. Never any accounts charged from one to the other. Dealt with them just as I did with the other attorneys—each one about his own business. Did not do anything for Benson that Hyde suggested, nor vice versa.

I think there were two of the Morris families; don't recall their first names. They were both men. They were both married. Don't know the names of their respective wives. As I have said I never knew any one named H. M. Morris.

862 With respect to a number of people asked me to-day by the district attorney I say I don't know them. I haven't any knowledge of them. In the course of my business in 1902 when I was earning three or four hundred dollars a month, there would be hundreds of persons who came before me in the course of a year whose names I can't recollect now. I can't remember them



all. Could not say with respect to any particular person that that person never appeared before me or that I never heard of him. All I can say is that I don't recollect now. I took six applications before I left home, and I was trying to think of the names of those applicants, and I can't remember them now. I kept a record just to show the notice that these people appeared before me, and whatever the instrument was and the date. The records were destroyed by the fire.

When a man came in to me and swore to an affidavit, it was not my custom to make any inquiry as to who he was or to have him identified. I would just swear him. I have taken hundreds of affidavits of persons about all sorts of matters without making any inquiry at all, and when a man came in and asked me to take his affidavit, I didn't make it my business to look into the paper and pry into the business and see what he was doing. I never intentionally certified that a person had sworn to a paper before me, leaving blanks to be filled up. If that happened, I didn't notice the blanks. Don't remember signing a blank paper in my life for any one, and would not. I recollect that ordinarily a power of attorney went with an application. It was in the power of attorney to leave a line or place where the name of the attorney was to appear, blank.

The description of the land was always in.

863 I had quite a conversation with Mr. Hyde over the phone in reference to my doing business with Benson. This was in 1903 or 1904. It was about eight months after I started to do business for Benson. Hyde told me that if I would do any more work for Benson he would not send me any more work to do for him. He would not allow me to do any more notary work if I did work for Benson. When they met on the street, they did not speak to one another. I saw them passing time after time right in front of my office. They would pass one another on the street, coming and going in opposite directions. They would pass within a couple of feet. Seen that happen for weeks and weeks and months and months during these years I have been telling about, 1902 and 1903.

In rendering my bills to Benson, I sent them to his office, and Mr. Hyde's bills I sent to his office, and so on for these other people I did business for.

Speaking of the time I went to Hyde's Office and acknowledged these 600 deeds, I think they were deeds for land that Mr. Hyde was deeding back to the State of California. That must have been in 1902. I am not positive whether or not they were powers of attorney or assignments or something of that kind. I am not positive.

In 1902 or 1903, I was in the Schmidel Building—the only notary there. The number of notaries was limited in San Francisco. There were only sixty notaries at that time in all the city and county of San Francisco, and I was down near the land office right close to it

864 where all the land lawyers were around me, and I was the most convenient to all of them, the closest one. I was about

150 feet from the land office, and I got the bulk of the business of these land attorneys, and did a lot of business for people around there and banks and other lawyers, corporations, etc.

## Redirect examination.

By Mr. BAKER:

I have taken acknowledgments where the name is left out of a power of attorney. Don't know who they came from. They were all done in the same way in all the offices.

"Q. On your direct examination you state that the 600 deeds were signed in 1903 or 1904, and now you state 1902. Which is correct? A. I believe they were in 1901, or 1902, Mr. Baker, to the best of my recollection."

The substance of the conversations with Mr. Hyde over the phone was that he said that if I did any work for Benson I could not do any more work for him. I said nothing. I was a Government official, and knew that I had to take affidavits from anybody that sent them to me. This conversation I think was in 1902. I don't remember the publication of the matter of this investigation. I kept on doing work for Benson, but I got very little work from Hyde after that. It was in 1902 that I commenced to do work for Benson, and eight or nine months after that Hyde finished with me; so that I didn't do anything but small jobs for Hyde in 1903 and 1904. Didn't do the work I was doing before.

It was in 1902, 1903, 1904 and 1905 that I saw them pass one another on the street without noticing each other. It was after my conversation with Hyde over the phone. George Perrin never did any work for Hyde.

"Q. You stated, in answer to a question put to you by Mr. Worthington, that you never inquired who a person was when they came to acknowledge a paper before you. A. No, sir; I never did.

"Mr. WORTHINGTON: Making affidavits is what I spoke of.

"The WITNESS: Making affidavits, it must have been.

By Mr. BAKER:

"Q. I say, how about an acknowledgment? A. Oh, I would ask them to acknowledge their signature on there.

"Q. I mean as to inquiring who they were? A. No; I never asked who they were.

"Q. Now, an acknowledgment, under the law of California, requires the persons to be personally known to you; does it not? A. Yes.

"Q. You never made any such inquiry? A. No such inquiry at all.

"Q. On Friday you stated that you went to Mr. Hyde's office pretty much every day, and frequently purported affiants appeared before you, and when they did not you were personally assured by Mr. Hyde that the persons actually existed. Now, you say that you never took an affidavit unless the party appeared. Which is correct? Answer. They were not affidavits, Mr. Baker. I mean to say they were acknowledgments. There was never any such thing done as taking affidavits when the people were not there.

Witness was then reminded that he had stated a little while ago, in answer to Mr. Campbell, that he never took an affidavit to an application for Mr. Benson where the applicant was not present

and swore to the paper, also that on Friday he had stated that in quite a number of cases he took the word of Mr. Benson or of his clerks, as the case might be, that the parties whose signatures purported to be on the papers had actually signed them in person; and he was asked which statement is correct.

"A. Well, they actually appeared before me.

"Q. So the statement you made last Friday was not true? A. Yes; I didn't understand it thoroughly.

"Q. Well, it was read to you last Friday; was it not? A. I know.

"Q. And you answered that it was true? A. It was not so.

"A. You stated a falsehood here, then, last Friday? A. No; I won't say that, because I mis-understood the question altogether.

"By the COURT:

"Q. How did you understand it? What did you understand?

By Mr. BAKER:

"Q. Yes; what did you understand last Friday? A. I understood that you asked me if the people ever appeared up in Mr. Benson's office when they signed the papers.

"Q. And what reply did you make to that? A. I say that they were there.

Witness was then asked a question which had been asked him on Friday; and answered the same, as follows:

867 "Q. Did or did you not further say, "Herbert Clarke, an employé of Hyde's office, and other clerks in his employ, brought these papers to me. Frequently the purported affiants appeared before me, and when they did not I was personally assured by F. A. Hyde that the parties actually existed;" and did you not reply: "That is right?" A. Well, who were the purported affiants there?

"Q. I am asking you if you testified to that on Friday. A. If it reads just the same as the statement, sure.

"Q. Now, I want to know—to day you say you never took the affidavit of anybody unless they appeared before you. What explanation have you to make in regard to the statement Friday? A. I don't understand the thing now.

"Q. Well, I will go on. Did you or did you not further say—referring to your work with John A. Benson: "The first papers which I attached my jurat to were paid for by the applicants themselves? A. That is true?"

"Q. And I saw them going into Benson's office. A. That is true."

"Q. And you answered: "True." A. Yes.

"Q. And then the following question was put to you:

"Q. A little later Benson sent a clerk to my office and asked me to take some acknowledgments in my office. The applicants were present at the time. In quite a number of cases I took the word of Benson or of his clerks, as the case might be, that the parties whose signatures purported to be on the papers had actually signed them in person", and the answer was: "Yes, they were very rare cases, though." A. That is true.

868 "Q. You have now stated to Judge Campbell that you

never took an acknowledgment unless the party was present. Which is correct?

"Mr. CAMPBELL: He doesn't state there that he took an acknowledgment.

"Mr. BAKER: Or an affidavit?

"Mr. CAMPBELL: He doesn't state that there.

"The COURT: Well, he just denied to you that he took signatures to or certified to any kind of papers, and you named them all, when the parties were not present. The point is this: That is what he testified to Friday, and we all heard what he just stated to you. Now the question is whether he can explain it, or wants to explain it.

"By Mr. BAKER:

"Q. Do you want to make any explanation about it? A. There was isolated cases where I did take affidavits—not affidavits, but acknowledgments—when the parties did not appear."

"By Mr. BAKER:

"Q. I will ask you whether or not, on last Friday, you did not testify as follows:

"I will ask you whether or not in the conversation which you had with Mr. Neuhausen and myself, after you read over that paper, you were not asked this question: When you stated that Mr. Hyde had to vouch for them if they did not appear before you"——

"A. That is true.

"Q. Did I not say to you "How did he vouch"? Did he  
869 not come in person? and did you not say no, that you called him up over the telephone, or that he called you up over the telephone? A. That is right.

"Q. And said the parties were all right, and to go ahead and make the affidavits? A. Right.

"Q. Or the acknowledgments? A. Right.

"Q. That is correct, is it? A. That is correct.

"Q. Did you so testify? A. Yes sir.

"Q. Was the following question put to you?

"You were shown the papers we showed you here, the applications for school lands, or some of them, were you not?"

"A. Three of them."

"I will ask you now whether you want to make any explanation of that testimony, as connected with your cross examination?

"A. I don't think that statement is correct.

"Q. Why did you so testify last Friday, in that regard? A. I perhaps did not understand the questions clearly.

"Q. What was there about the questions you did not understand? A. About going up and taking the affidavits over the telephone, or taking acknowledgments over the telephone.

"Q. You were asked. A. And said the papers were all right, and to go ahead and take the affidavits,"  
and you answered;

"Right". Is that true?

870 "A. No sir.

"Q. So that when, on last Friday, you answered 'Right' you said something that was not true? A. It was not true."

I have not seen anybody representing any of the defendants since last Friday, and since I have known I was going to be a witness in this case I have not talked with any of them; have not talked with anybody except the witnesses about the case—that is, my friends who are here, that I have known of. I know none of the principals at all. I have never seen any of them. I have been here with Mr. Harr all the time, but I did not talk to him. I did not tell anybody about the telephone conversation in regard to Hyde and Benson.

I always said when I heard it broached, that I knew very well that Elizabeth Dimond was in existence. I never told anybody about that. I never told anybody about the fact that Hyde and Benson passed each other and did not speak. I know Mr. Tricon very well. We have spoken about the case, of course. I did not tell him anything about the things referred to—not a word about the things you have asked me. I did not talk to him about my testimony; to-day he asked when I was going over this morning.

Recross-examination.

By Mr. CAMPBELL:

Hyde and Benson had some trouble and litigation in 1902 and 1903.

By Mr. WORTHINGTON:

"The papers that came to me from Hyde's office were always signed by Hyde. In the statement which Mr. Baker read over to me, 871 in which I stated that the bulk of the papers that came to me to attach my jurat, related to state lands, and were principally powers of attorney and deeds to F. A. Hyde & Company—that should have read "from" instead of "to" Hyde and Company. I made that statement to Mr. Neuhausen. No one else was present. I had not talked with detective Burns about it. Never met him, at all. I saw Neuhausen only once, I think. He prepared this statement in San Francisco. He took it down himself. It was in typewriting when I saw it. He typewrote it right in my presence, and I signed and swore to it. I didn't notice at the time that I stated that I was made to state that these deeds were "to" Mr. Hyde. I didn't notice they were deeds "To" Mr. Hyde when, as a matter of fact, it was from him. I didn't read the statement over very carefully.

By Mr. BAKER:

Mr. Hyde signed a great many powers of attorney. I don't know to whom. They were left in blank. There were hundreds of them, powers of attorney, in which he would make somebody else his attorney. He would send the power of attorney to somebody else, giving someone authority to do something for him. F. A. Hyde and F. A. Hyde & Company gave the powers of attorney. My signature is

signed to that statement. Mr. Neuhausen sent two special agents down to my office and asked me to come up and call on him.

By Mr. WORTHINGTON:

And I called on him. Mr. Neuhausen took my statement down on the machine. I was present. We were talking over this business and he put it down on the machine just as the conversation was going on.

872 By Mr. BAKER:

I went with Mr. Benson in an automobile to get some papers. That was after the fire, I think. I went around in the Mission district with him. I took some affidavits. They were applications. I went with George Perrin once to see some parties. It was a long time after they made their assignments.

By Mr. BAKER:

"Q. I will ask you whether or not, in your statement to Mr. Neuhausen, you did not state——

Mr. WORTHINGTON: I understand this is admitted for the purpose of discrediting the witness.

The COURT: Just the same as the other, of course.

By Mr. BAKER:

"Q. Did you not say: I attached my jurat to quite a number of applications and powers of attorney in cases where the signatures had been obtained in lodging houses on Sacramento and Montgomery Streets. George H. Perrin secured a number of these signatures, and I went with him on two occasions to lodging houses, and was present when the person signed the applications and powers of attorney. It occurs to me that the assignments were signed a day or so later, and that I had to do with very few of them."

I will ask you whether or not the part of the statement "It appears to me the assignments were signed a day or so later and that I had to do with very few of them"—is that statement correct? A. Yes sir.

873 *Henry P. Tricon.*

Direct examination.

By Mr. BAKER:

Notary Public, San Francisco, California. Am acquainted with Hyde. Known him for ten years or more. I know Benson. Have known him for ten years or more. I have done work for Hyde, covering the period of my acquaintance with him.

My certificates with the affidavits will prove that I did work for him in 1897, 1898 and 1899. In 1897 and 1898 I certified to or swore witnesses for him. They generally appeared before me, but there were exceptional cases where they did not appear; but, under representation from a good source, I affixed my seal to the documents. These were certificates—applications. I don't know for

what lands, but applications for lands. Don't remember when I commenced this. Not the slightest idea when we began. When the witnesses did not appear, Hyde's clerk or messenger would bring the papers, assuring me that everything was correct, and from that source I affixed my seal. I do not know what lands these papers related to. There were applications and powers of attorney. Only powers of attorney to empower a party, you know, to act for the applicant. That is all I know of. Don't remember any deeds.

I don't know Elizabeth Dimond. Nobody by that name appeared before me to my knowledge. The application and the power of attorney generally came together.

I did notarial work for Benson. They came from him in the same way—applicants would come to me or the papers  
874 might be sent to me without the applicants. These were exceptional cases, however. His clerk would bring these papers to me. Sometimes a little colored boy, or it might have been some other clerk. Powers of attorney would be brought in the same way. I had an account with each of these men. I had a running account with Hyde and one with Benson, and sent in my account to each of them monthly. They always paid their bills. I didn't do a great deal of work for them, might average probably \$10 or \$12 a month. The regular fee for taking acknowledgments or an affidavit, or an application for school lands, is fifty cents. We did it at twenty-five cents. The law allowed a dollar for a power of attorney. We charged fifty cents. Did it for half the fee for Hyde, because of doing a great deal of work for him. Did it for Benson for same reason. I was willing to do so. I had no conversation with Hyde about taking affidavits and acknowledgments where parties were not present—none except upon his representation that everything was correct, and from the source that it came from—his office—anything that came from his office was all right. That is to say, if the witness did not appear, it is a customary practice to certify papers when the parties do not appear. I suppose I adopted such a practice because I was assured that everything was all right by Mr. Hyde. The same way with Benson. I adopted that course of my own motion being assured, you know, that everything was correct. They told me that—that if the witness didn't appear before me it was correct; and they had signed it. When I speak of the witness I mean the affiant in the land papers. You know the  
875 affiant swears to the application. I mean the applicant. I never examined any of these papers of the applicant. I have examined the papers in your office since then. I could not say from an examination of these papers whether or not a person appeared before me—it would be impossible. I could not say except as to the persons that I know well and which were impressed on my mind. The papers that you showed me I don't remember any person that I knew well except I think—Mrs. Belle Curtis. That is the only one I remember.

Witness was then shown an assignment by Jennie P. Blair to A. S. Baldwin, dated October 3, 1898, and asked whether his signature as notary appeared on the paper; and he answered that it did; also

that his signature was on the paper as a witness. He further said: I don't remember anybody by that name; and was not acquainted with any such person. It doesn't require my acquaintance for a person to appear to an affidavit, you know; to an acknowledgment, yes. This is an acknowledgment. It is so, that it says that "Jennie P. Blair, a married woman, being personally known to me to be the same person who subscribed and executed the within instrument;" but she did not appear before me. I do not remember her at all. Evidently I put my signature to papers of that kind for Mr. Hyde and Mr. Benson without the parties appearing. I did put my signature to acknowledgments for Mr. Benson when the parties did not appear, if I knew the parties or was assured that they were the right parties.

Witness was then shown what purported to be a deed of relinquishment of certain property by Elizabeth Dimond, dated February 24, 1898; and he stated: That is my signature on the deed. I cannot say whether Elizabeth Dimond ever appeared before me. She 876 was probably identified, or I put my signature there upon the assurance that she had signed the document. I did not know anybody by that name. I don't remember any such party.

My signature as notary also appears on a deed of relinquishment now shown me, purporting to be signed by Elizabeth Dimond, and dated November 22, 1899. I do not remember of her appearing before me. I am very well acquainted in San Francisco. Have been there ever since 1853. I never knew anybody by the name of Elizabeth Dimond. I don't remember any such party; nor Jennie P. Blair.

The papers exhibited to the witness were then marked as exhibits and read to the jury, as follows:

Elizabeth Dimond deed, dated February 24, 1898, marked Exhibit No. 414.

Elizabeth Dimond deed, dated November 22, 1899, marked Exhibit No. 26.

Jennie P. Blair assignment, dated October 3, 1898, marked Exhibit No. 413.

The several papers are in the words and figures following:

(EXHIBIT No. 26.)

Know all men by these presents, That whereas, I, the undersigned am the owner of the land hereafter described, included within the limits of the Sierra forest reservation of the State of California, which land I desire to relinquish to the United States, and select in lieu thereof an equal quantity of vacant land open to settlement, as provided by the Act of Congress of June 4, 1897; (30 Stat. 36).

877 Now, Therefore, I Elizabeth Dimond, of Alameda County, State of California, do hereby release, remise, grant and relinquish to the United States of America, the said land, which is described as follows:



All of section 16 (16) in the township twenty-eight (28) south, Range thirty-four (34) east, Mount Diablo Meridian, situated in the county of Kern, State of California, and containing 640 acres, and I agree to accept in lieu thereof other land to be hereafter selected by me or my assigns, equal in area to that herein relinquished.

Witness my hand this 22nd day of November, 1899.

(Signed)

ELIZABETH DIMOND.

Witness:

W. K. SLACK.

(Stamp.)

STATE OF CALIFORNIA.

*City and County of San Francisco, ss:*

On this 22nd day of November, 1899, before me Henry Tricou, a Notary Public in and for the said City and County of San Francisco personally appeared Elizabeth Dimond personally known to me to be the same person whose name is subscribed to the within instrument and she duly acknowledged to me that she executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signed)

HENRY P. TRICOU.

*Notary Public in and for the City and  
County of San Francisco, State of —.*

878

(EXHIBIT No. 413.)

Know all men by these presents, That I, Jennie P. Blair (an unmarried woman) of the County of Multnomah, State of Oregon, for and in consideration of value received, to me this day paid by S. A. Baldwin, do hereby grant, bargain, sell, convey and confirm unto the said A. S. Baldwin, his heirs and assigns forever, all of my right title and interest, and also all the right, title and interest that I may ever hereinafter acquire, of, in and to that certain tract of land situated in the County of Klamath, State of Oregon, and described as follows, to wit:

The west half of Section 16, in Township twenty-three (23) South, of Range Seven (7), East of Willamette Base and Meridian, containing Three Hundred and Twenty (320) acres of land.

To have and to hold the said land, and every part and parcel thereof, together with all the appurtenances thereunto belonging, unto the said A. S. Baldwin, his heirs and assigns forever.

In witness whereof, I have hereunto set my hand and seal, this, the 3rd day of October, A. D. 1898.

(Signed)

JENNIE P. BLAIR. [SEAL.]

(Stamp.)

Signed, sealed and delivered in presence of

HENRY P. TRICOU.

M. C. HAYES.

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this 3rd day of October one thousand eight hundred and ninety-eight before me, Henry P. Tricou a Notary Public, 879 in and for the City and County of San Francisco personally appeared, Jennie P. Blair (an unmarried woman) personally known to me to be the same person whose name is subscribed to and who executed the within instrument, and she duly acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL.]

HENRY P. TRICOU, ·

*Notary Public in and for the City and  
County of San Francisco, State of California.*

The other paper purporting to be signed by Elizabeth Dimond, and marked Exhibit 414, is the same paper hereinafter given as Exhibit 414, in connection with the testimony of the witness Walter K. Slack.

Witness was then shown California State Application to Purchase No. 4356, in the name of H. E. J. Palmer, Post office address, 630 Commercial Street, San Francisco, lands in count 28 of the indictment, and was asked if his signature as notary appears to the affidavit on the application. He answered: Yes, that is my signature. I do not know anybody by the name of H. E. J. Palmer. Have heard of the Palmers, but don't remember any such name as H. E. J. Palmer; and have no recollection of his ever appearing before me.

I went over carefully certain papers the other day with Horace Stevens. I also went over a large number of papers with the 880 Surveyor General of California, Mr. Kingsbury, and examined the applications, powers of attorney, abandonments, affidavits of two witnesses, and the assignments, found in the papers, which bear my signature as notary and I made out a list of the same, on which list the numbers of the cases are given together with the land district in which the lands were situated, and I have checked with a cross (X) the character of the paper or papers which bear my signature as notary in each case.

Said list was then introduced in evidence, marked exhibit No. 415.

WITNESS (resuming): After looking over these papers, it is impossible for me to state in what case the parties appeared before me or in what case they did not appear. I don't remember particularly that I noticed the name of Belle Curtis. I did not testify that she appeared before me. I could not say that she appeared before me. I knew her but am unable to say whether she appeared or not, it is so long ago.

(The several cases, or applications to purchase, the numbers of which are given on the aforesaid list, excepting those stated under the heading: "List C, Bill of Particulars," embrace lands described

either in the indictment or in list A or list B of the bill of particulars. The papers in all but six of the cases were papers which, as was shown by other evidence in the case on behalf of the Government, had emanated from the office of the defendant F. A. Hyde. The papers in the other six cases emanated from the office of the defendant John A. Benson. The numbers stated under the heading: "List C. Bill of Particulars," embrace lands described in said list C of the bill of Particulars.)

881 Cross-examination.

By Mr. CAMPBELL:

As to all of these papers I simply say that it is so long ago it is impossible for me to remember who appeared and who did not. I am 78 years old. I have been a notary public in San Francisco for 23 or 24 years. Yesterday I stated I didn't know Jennie P. Blair. I know there is a family of Blairs who live on Van Ness Avenue. I am not personally acquainted with them. Mr. Blair was what we call one of the old Comstockers. Don't remember the first names of his daughters or his son. The old gentleman was very rich once; but finally lost his money.

Cross-examination.

By Mr. WORTHINGTON:

While I was doing work for Hyde and for Benson, I think Mr. Ackerman has been in my office. I suppose I signed some applications for him. I did business for some banks. It was the usual thing for me, where I knew the persons well, to certify that they had appeared, when I was assured that their signatures were genuine and where I knew the source, you know. That was a common practice among notaries in San Francisco. I suppose if Mr. Hyde had signed any papers and sent them to me that I would have affixed my seal to them. He used to go by my office several times a day on his way to the Union Pacific Club, and he would drop in quite often. There may have been some of the papers from his office that have been signed by him. I don't remember what portion were. When in

San Francisco, a statement was obtained from me by the  
882 Government. It was last year, when I was subpoenaed here.

That is the first time I made any statement. It was taken down, and I signed and swore to it. They showed it to me. I read it to refresh my memory.

If a person came in to me to make an affidavit I did not require them to be identified. The law does not require it, and I would swear him and certify that he had sworn to it.

I don't know whether Jennie P. Blair appeared before me. Don't remember at all. Unable to say how many people appeared before me in 1898 and 1899. A great many. Don't remember one out of a hundred. Not necessary that I should know them so as to identify them. I would say the same thing about Elizabeth Dimond. She might have appeared before me half a dozen times, but I don't know her. I don't recollect her now.

*Moses Greenblatt.*

By Mr. BAKER:

Reside in San Francisco. Not doing anything at present. In 1896, 1897 and 1898 and 1899 I was notary public and, besides, was editor of a German newspaper. Appointed notary in 1896. Served four years.

I know Benson. Became acquainted with him about 1898. Introduced to him by a man named Marcus Hart. Benson told me he had a number of persons desiring to make applications for land. He said probably a number of them would not have time to appear before me in person, and I should take their signatures and he would vouch for every one. We agreed on a price of 37½ cents a name.

883 I desire to correct a statement which I made in the deposition where I said 50 cents. 50 cents was only charged by me after a while. After I made this arrangement with Benson a woman came and brought these papers, and a young man also; and I signed them upon my knowledge of Mr. Hart and Mr. Benson. It amounted to about \$15 a month. Sometimes Benson came with the papers. I would acknowledge them. In some cases these people would be accompanied by a person to swear. In some cases he was not. When Benson brought papers he would not bring anybody with him. I would send a bill to Benson for taking the acknowledgments, and I would be paid by Mr. Benson's check. I glanced over these papers. None of them were in blank. At that time, I knew what land they referred to; but could not tell now. Public lands I suppose. I have examined some papers since I arrived in Washington. I have examined them with Mr. Neuhausen, and with Mr. Kingsbury. I examined all of these papers mentioned in Exhibit 416.

Witness was then shown application to purchase No. 2224, in the name of Joseph Weinberg, represented in said list No. 416 (lands in count 1 of the indictment), and was asked to examine the same and state whether his recollection was refreshed as to the kinds of papers that were brought to him by Mr. Benson or his clerks; and he answered: Yes, sir; the papers brought to me referred to school lands. He further said: I know Joseph Weinberger. I am not sure whether he appeared before me in that case.

The papers in other cases of applications to purchase school lands, mentioned on said Exhibit 416, were then shown to this witness and he testified with respect thereto as follows:

884 Application No. 2233, in the name of Milton Goldsmith (land in list B of the bill of particulars), I have a recollection that Milton Goldsmith did not appear before me.

Application No. 2262, in the name of Marcus Hart. Marcus Hart appeared frequently. He came several times to swear.

Application No. 2284, in the name of E. C. Jennings (land in list B of the bill of particulars), I am not acquainted with E. C. Jennings. I don't think he appeared before me. My recollection is that he did not.

Application No. 12,313, in the name of E. J. Foster (land in list B of the bill of particulars). I am not acquainted with E. J. Foster. My best recollection is that he did not appear before me.

Application No. 12,314, in the name of Charles H. Holcomb. I know Mr. Holcomb. He did not appear before me.

Application No. 12,318, in the name of Solomon Raphael (land in list C of the bill of particulars.) I do not know Solomon Raphael. No man of that name ever appeared before me.

Application No. 6549, in the name of S. H. Collins, list B of the bill of particulars. I know Mr. Collins but not particularly acquainted with him. He never appeared before me.

Application No. 6604, in the name of Harry Weber (land in count 32 of the indictment.) I am not acquainted with Harry Weber. My recollection is that he did not appear before me to make affidavit to the application or to acknowledge any 885 paper. I recognize these papers as those brought to me by Mr. Benson or his clerks.

Application No. 6609, in the name of Gustav Marcus (count 32 of the indictment.) I don't know Gustav Marcus. Nobody by that name ever appeared before me. Either Benson or one of his clerks brought these papers to me.

Application No. 4277, in the name of Samuel Rosener (list B of the Bill of Particulars.) I don't know Samuel Rosener. No person by that name ever appeared before me to swear to or acknowledge any paper.

Application No. 2225, in the name of Margaret Andrews (count 1 of the indictment). I am not acquainted with Margaret Andrews. She never appeared before me.

As to these papers that have been shown me my memory is entirely blank on the point of who brought them. Either Mr. Benson or one of his clerks brought them, but I can't tell which.

(It was shown by other evidence in the case, as well as by this witness, that the papers referred to emanated from the office of the defendant Benson.)

Mr. Hart introduced me to Mr. Benson. Don't remember having seen Mr. Hart and Mr. Benson together any other time. Mr. Hart took part in the conversation I had with Mr. Benson. Hart said: "Greenblatt, here is the chance for you to get some work". And he then told Benson to go on and state his proposition to me. Then the price was agreed upon. That is about all. Hart heard the conversation. Benson fixed the price; afterwards I raised it to 50 cents—shortly afterwards. May have been three months, may be 886 six months. It was done because money didn't come in very rapidly. I worked for Benson about two years. Got from 15 to 20 or 22 dollars a month.

Cross-examination.

By Mr. CAMPBELL:

My notarial record was destroyed about 1904. We moved, and my books, together with several other papers, were soiled and mouldy, and my wife sent them away. I was appointed in 1896,

Held my commission four years. Kept a record during that time. Have not examined my record from 1900 to the present time. I can't remember a single person that appeared before me in the year 1898 and acknowledged a paper.

Can't tell how many acknowledgments I took in 1898—"Yes, a hundred a month."

Lived in San Francisco about 35 years. Knew a great many merchants. Did notarial work for several attorneys: Lindley and Eichhoff, William Loewe, of Loewe & Kutz. Acknowledged several different kinds of papers for them. Lindley & Eichhoff are mining lawyers. I acknowledged mining papers. Can't name a single person for whom I took an affidavit in 1898 at the instance of Mr. Lindley or Mr. Eichhoff. Can't name any person for whom I took an affidavit in 1898. First made a statement in this case about two years ago to Mr. Neuhausen, in San Francisco, at a hotel on Post Street. Can't recollect the same. It was written down. I signed it and swore to it. I made a statement to Mr. Neuhausen without having seen the papers.

First saw these papers at Sacramento, where I was shown some of the papers. That was about a year and a half ago—about 887 two years ago. I went there for the purpose of examining them. Don't know at whose instance I went there. I was requested by somebody, I don't know his name, but think it must have been somebody connected with the Government. Can't remember the name of the person. Might remember the individual if I should see him.

I know Joseph Wineberger. Known him five or six years. Not intimately. He was a clerk with his father in law, Marcus Hart. I don't think he appeared before me. My reason is—well, merely recollection of it, but I am not able to tell any one who did appear before me in either 1898 or 1899.

That is my signature to what purports to be assignment of a certificate of purchase No. 221, executed by Mr. Mason. The entire acknowledgment—the part that is in writing, is in my handwriting.

Counsel for defendant Benson reads over the certificate to witness—his certificate in which he certifies that Joseph Wineberger was known to him and personally appeared, etc.

Witness says that certificate is true.

Don't know Isaac Liebes. By reputation, not otherwise. Don't know who he is.

Have no recollection of Gustav Marcus. Don't know where he lives. Don't know anything about him and never heard of him. All other writing in the notary's certificate on the abandonment of location attached to application No. 6609, Gustav Marcus, is in my handwriting. His notarial certificate is read to this and he says that it is true.

888 I know Charles H. Holcombe. He was city engineer, a prominent man, well known to everybody. Don't know his signature. Knew him about four years prior to 1898. My handwriting in the jurat. The jurat is true, to that extent that I know Mr. Holcombe's handwriting, and, at the same time, I went on Mr.

Benson's voucher for his name. He did not appear before me; but it was a common practice among notaries to take any signature of a well known man, vouched for by some prominent person. It was done by bankers, as well as in the mining business and land business. In doing this business I carried out the practice that was in vogue among all the notaries, more or less. There were persons who appeared before me and swore to these affidavits. I couldn't tell who did appear and who didn't appear in relation to these affidavits. These are only a few of the cases. I took a great many more applications than these. Did not examine all I took. The Surveyor General and Mr. Neuhausen pointed them out to me. Can't remember how many applications for land I swore people to in 1898 and 1899. Can't figure it up. At least 20 a month, might have been 50. I took at least 500 applications and abandonments and acknowledgments for Benson during the years 1898 and 1899. These are the only 11 which were pointed out to me by the Government.

When I went to Sacramento to examine these papers I don't know that I examined any more than these 11. Well, I know I didn't. I don't know whether I examined these very 11. Don't know whether I examined them at all. Don't know the number of papers or what papers I examined. Can't give any idea. They were just like these. Don't know who it was I made the examination  
889 with. It was a young man whose name I do not know. Nor do I know whence he came. He said I should come to Sacramento and examine the papers. Since 1890 I was a book-keeper for the German General Benevolent Society, or, rather, I was cashier. My acquaintance in San Francisco used to be very large, but of late it is rather limited. I don't know E. J. Foster.

Witness' jurat on application 12313 is read to him. Says it is true to the extent which he named before; That he took Benson's word for the correctness of it.

"Q. How do you remember that you took Mr. Benson's word for the correctness of this particular application? A. Well, as I stated, he made a general proposition that any man that did not come before me he would vouch for the correctness of it.

"Q. But you have told us that a great many people did come before you that you did not know. A. Yes sir.

I am unable to testify positively that Mr. Foster was not one of those people who came before me, to the best of my recollection now, though I don't know Mr. Foster, and don't remember the people who did come before me. I just have the general knowledge that he did not appear. Don't know what is the basis of my conviction that he didn't appear—well, I can't tell exactly why I say so, but I don't remember any such name at all. Well, I don't remember—yes that is it. I remember that he did not come before me—I can remember what did not occur, but I cannot remember what did occur. That is the position my mind is in.

890 Talked with the agents of the Government about twice about this case. Made a statement first in San Francisco. Then I talked with a young man with whom I went to Sacramento. Talked with them once since I have been here. That was this

morning. These particular applications were only shown to me this morning. No recollection of ever seeing them before.

Don't know E. C. Jennings. I have not made any inquiries about these various people as to whether or not they remembered appearing before me.

By Mr. BAKER:

I don't know John C. Rice, or S. C. Taylor. Don't remember whether they ever appeared before me.

By Mr. CAMPBELL:

Campbell says he does not want to take up these papers one at a time and asked the witness if not all he can say is that he has no recollection of the particular person appearing before him. The witness says:

I can only say with respect to some parties that they have not appeared. One of them was Mr. Collins. I knew him by sight. He was not the man who kept the cafe on Montgomery Street. Yes, I know that Collins, but that was not the one. He appeared before me in some cases concerning money that was left to his wife—entirely different from this business. That man S. H. Collins never appeared before me, because I know by personal recollection that he did not. I knew him by sight. He was a pawnbroker. Kept his place on 20th Street. I am thinking of the pawnbroker. He did not appear before me and acknowledge that paper. Of course I can't tell that some other gentleman of the same name did not appear. I have this particular man in mind when I am speaking about it. I made a record which would show whether these people appeared. I guess I put them down on the record. I was paid \$20.00 for going to Sacramento I was there one day. It cost \$5.00 to go and come. The young man paid me money for going there. When I saw those representatives of the Government they didn't tell me that I had violated the law, and offered me no money to make the statement. The only thing that took place between me and the man with whom I went to Sacramento was that he told me to go with him and examine some papers and he would pay my expenses. He gave me the \$20.00. At the time I went to Sacramento I was a cashier. That was two years ago. My duties were to take in money mostly, look over the accounts of the various people at the German Hospital. Was cashier there for about two years. Looked over those accounts ever six months. The first year I was there was 1902, or 1903—1902 I guess or 1903. Can't tell the jury the names of ten men who were on the books of the German Hospital. By personal acquaintance I could name a dozen. I remembered them as my friends and acquaintances. When these people did appear before me in connection with these land matters, they usually stayed about ten minutes. They all came to my office. Did not go to theirs. The longest time any of them stayed might have been eleven minutes, or it might have been only eight minutes. If I knew them, I might have conversed with them about the business—might have asked how their families were—but I don't remember.



892 Cross-examination.

By Mr. WORTHINGTON:

Think I took some affidavits or applications for Mr. Ackerman, to some small extent. He was a land lawyer—swearing people to applications for land, and in connection with assignments, and taking acknowledgments to powers of attorney. Don't think Ackerman's business amounted to five dollars a month.

Can't remember the time, suppose it was 1898 or 1899. I have no means of identifying any particular paper and telling whether Ackerman brought it, or whether Benson sent it. I have not examined any of these papers that have been sent me closely; but I don't think any of them was from Ackerman. Don't remember the name of one of them. I took it for granted that these came from Benson. Did not take it for granted, without somebody telling me. I saw the papers, and saw by their names and could pretty well judge from that whether they came from Ackerman or Benson. In a few cases I can tell by the names. I mean I can identify those that came from Ackerman and those that came from Benson.

If I saw the paper, I can tell you the ten or eleven cases that came from Benson. Without the paper, I recollect there is Wineberger who was sent by Benson. I could tell that came from Benson by the particular Clerk who brought it. Don't remember who that clerk was. If you show me that paper, I can tell you other names besides that of Wineberger.

Application 14,309 Solomon Raphael was shown witness. He says: I know that came from Benson because there was a run of those papers that indicated they came from the same  
893 source. I can't remember how that Mr. Ackerman himself didn't bring that paper to me.

I was not told that I had violated the law. Never said anything to the representatives of the Government about my being prosecuted. They never suggested it to me, and I have never been prosecuted. I saw by the text of the papers that they were about school lands. Don't remember whether when an assignment like this was sent to me, the other paper—certificate—was attached to it.

In 1898 and 1899 my office was in Montgomery Street, No. 415, I think. I changed my office several times. I had desk room with the Phoenix Fire Insurance Company. Don't know what the name of the agent was. I was there about two years. I cannot think of the name of the person from whom I had rented desk room, just now.

By Mr. WORTHINGTON:

I was in the same building with Hyde, I think, about two years. While I was there doing this business for Benson, I didn't do any business for Mr. Hyde. Cannot tell exactly what was the proportion in which the people appeared in cases when I executed papers. The proportions of persons who did appear was not very large.

## Redirect examination.

By Mr. BAKER:

I do not know Tillie Fleischauer. I don't think she appeared before me. My best recollection is that she did not appear before me.

Witness was then shown the papers in application No. 6553 in the name of Joe Sarochelle (list B. bill of particulars) and he stated that he had no recollection of any such person as Joe Sarochelle ever appearing before him. Also, the papers in application No. 12,316, in the name of N. Richardson (list B. bill of particulars) and he stated that it was impossible for him to say whether he knew N. Richardson in 1898. That he had no recollection of his ever appearing before him.

I don't know whether the name of C. W. Clark ever appeared in any of Mr. Ackerman's papers.

When I stated that the jurat on Wineberger's case was true, I stated he did not appear before me. I stated Gustave Marcus did not appear before me. The young man with whom I made the visit to Sacramento came to me and said he wanted me to go to Sacramento and identify some notarial papers which I executed. Don't remember who he said he represented. He might have mentioned Mr. Heney. He did not mention Mr. Benson or Mr. Hyde. I believe he said he represented Mr. Heney. Right at the time he made the proposition he asked me how much I would charge and I told him \$20.00. I met him up at Sacramento. He got the clerk to show me some papers that had my acknowledgment, a few papers only, that was all. No particular conversation with him. I believe it was Mr. Richards, the clerk, who was present. This young man was about 35 I should judge. Dark face and moustache, I believe, and rather tall. He paid me \$10.00 at Sacramento and the rest he paid me in San Francisco. I remained in Sacramento one day. I believe I have seen that young man in San Francisco once since.

He did not take any statements from me. It was afterwards I made the statement to Mr. Neuhausen. It was about two years ago I saw the young man who went to Sacramento. When I saw Mr. Neuhausen I did not state anything about this young man.

I know L. Meininger. He is dead.

I kept the ordinary record of a notary. If I signed the paper for Benson and the man did not appear it would appear on my record just the same, but the fact that the man did not appear would not be stated.

## Recross-examination.

By Mr. CAMPBELL:

Witness was asked whether he did not testify in the morning that he saw Mr. Neuhausen first and then the second man that he saw took him to Sacramento; and he answered: No, sir. I didn't know exactly what that man's business was, that I went to Sacramento with. You asked me how many times I had talked with any person representing the Government about this case, and whether I had

talked with Mr. Neuhausen first, and I said, yes; and it is a fact that I did talk to Mr. Neuhausen first. You did not ask me if I did not talk next with the gentleman with whom I went to Sacramento; and I am positive that I did not say that.

By Mr. WORTHINGTON:

When I went down to Sacramento with this man I couldn't tell whether the papers I saw there were the same that I saw to day. I didn't have any talk with the young man as to whether the parties appeared before me, or anything like the questions I have been asked here to day.

By Mr. CAMPBELL:

I understood Heney to be a special prosecutor for the Government.

896 By the COURT:

When I went with that man to Sacramento it was to verify my signatures and to see that I had actually certified to those papers.

By Mr. BAKER:

I don't know Mr. Devlin, United States District Attorney in San Francisco.

*Margaret Andrews.*

By Mr. BAKER:

My name is Margaret Ward Andrews. Reside in San Francisco, since 1865. My occupation is housekeeper, wife and mother. Since the earthquake, I have been soliciting for real estate. That is only recently. I never was a nurse in a hospital.

I never signed an application for school lands, to my recollection. I never heard of Mr. Greenblatt, the notary; and never appeared before him.

Witness was then shown application No. 2225, in the name of Margaret Andrews, and was asked if the signature "Margaret Andrews" was hers. She answered: No; I never wrote like that. I never signed my name without signing it Margaret W. Andrews. I don't think that is a bit like my signature. I don't think it is anything like my writing at all. I never lived at the Martinette House. I didn't know there was one in the city, by that name. I don't know any other Margaret Andrews in San Francisco; and am pretty well acquainted there in a way. There are very few Andrews' in San Francisco that I know of.

(The application shown to witness is dated August 16, 1897, and embraces lands in count 1 of the indictment.)

897 Cross-examination.

By Mr. CAMPBELL:

In 1897, I think San Francisco was a place of about 400,000 inhabitants, and perhaps more. I said there are no other Margaret Andrews in the city that I know of.

(The papers in the case of the application No. 2225 shown to this witness, together with all the other records shown to the witness Moses Greenblatt were then offered in evidence, and the same were received.)

*Cora D. Trowbridge.*

Direct examination.

By Mr. BAKER:

I am deputy treasurer of Fresno County, California, and have here the book which is a record of that county, which shows the money received by the treasurer of Fresno County for state school lands, swamp and overflowed lands; the entries in the book are in different handwritings; the entries in the years 1897 and 1898, 1899 and 1900 are mostly in my handwriting.

This witness then produced from the files of the office of the Treasurer of Fresno County, and the same were introduced in evidence, a number of letters from the defendant F. A. Hyde and a number from the defendant John A. Benson, addressed to the Treasurer of Fresno County, California; relating to certain described applications to purchase school lands from the state (which school lands are mentioned in the indictment or in the bill of particulars in this case) and enclosing checks, drafts or Post Office money orders in favor of the Treasurer of Fresno County for various sums of money, being payments in some cases of 20 per cent 898 of the purchase price of the said school lands, and in other cases of the full amount of the purchase price of such school lands; and \$3 additional for certificate of purchase. In all the cases the witness produced entries in the record of the County of Fresno showing that the payments had been credited as directed by the defendant from whom they were received.

*Joe A. Brown.*

Direct examination.

By Mr. BAKER:

I reside in Bridgeport, California, and have been county treasurer of Mono County in that State for the last nineteen years. I have here the daily journal of that office. I have in my record an entry as to application No. 2226, in the name of O. T. Zimms, under date of February 28th, 1898, which reads as follows:

"Cash, to money unapportioned, received from John A. Benson, for O. T. Zimms, as first payment on State school land location No. 2226, described as follows, to wit: All of Section 36, Township 3 north, Range 24 east, M. D. M., containing 640 acres; paid as principal, \$160; paid as interest, \$39.45; paid for certificate of purchase, \$3; total, \$202.45."

I know where that land is situated. It is situated on the top of Castle Peak, a mountain of 12,600 feet elevation; it is above the

timber line; snow clad; there are places on the north side of the mountain that are never bare from snow.

By Mr. BAKER:

"Q. Is or is it not of any value?

899 "Mr. CAMPBELL: That I object to, if your Honor please, on the ground that it is absolutely incompetent.

"By Mr. BAKER:

"Q. (Continuing:) For a person to live on?

Mr. CAMPBELL: Well, they did not have to live on it.

"The COURT: It is admitted.

"A. It would be impossible to live on it in the winter seasons.

"Mr. CAMPBELL: Did your Honor hold——

"The COURT: I think it is perfectly admissible. The whole theory of the Government is that these lands were utterly valueless in most cases, and only taken for purposes of exchange to the United States. That is an incident in the case. It is perfectly proper to show it. The weight of it will have to be for the jury in connection with all the other testimony.

"Mr. CAMPBELL: If your Honor please, there is no charge of that kind in the indictment.

"The COURT: Oh, well, there doesn't need to be.

"Mr. CAMPBELL: And they didn't have to be of value. The Government wanted them.

"The COURT: You have an exception."

To the ruling of the court counsel for the defendants and each of them duly excepted.

The witness thereupon turned to an entry in his record as to application No. 2255, in the name of Frances C. Dutton, under date of March 25th, 1898, and read the same as follows:

900 "Cash money unapportioned, received from Frances C. Dutton, by F. A. Hyde, as first payment on State school land, location No. 2255, being all of Section 16, Township 6 North, Range 22 east, M. D. M., containing 160 acres; paid as principal, \$160; paid as interest, \$40.32; for certificate of purchase, \$3; total \$203.32."

The land is situated in a mountainous country, not so high as Castle Peak. It is in the Stanislaus Forest Reserve.

The O. T. Zinns application is also in the Stanislaus Forest Reserve.

The Witness next found, and read in evidence, under date of August 15th, 1899, another entry as to location No. 2226, in the name of O. T. Zinns, as follows:

"Cash, to money unapportioned received from O. T. Zinns as final payment on State school land location No. 2226, being all of Section 36 in Township 3 north, Range 24 east, M. D. M., containing 640 acres; paid as principal, \$640; interest, \$28; total, \$668."

That money was paid by Benson.

The witness then read another entry from his record relating to Frances C. Dutton application as follows:

"Cash, to money unapportioned, received from Frances C. Dutton as final payment on State school land location No. 2255, being all of Section 16, Township 5 north, Range 22 east, M. D. M., containing 640 acres; paid as principal, \$640; paid as interest, \$41.06; total \$681.06."

That money was paid by F. A. Hyde.

(Both the O. T. Zinns and Frances C. Dutton applications embrace lands in the bill of particulars.)

901 Cross-examination.

By Mr. CAMPBELL:

I knew Mr. Benson and knew that he was a land attorney; it was not anything unusual, in dealing with these attorneys of all kinds, for the attorneys to send the money for the principals.

Cross-examination.

By Mr. WORTHINGTON:

"Q. What I want to know is whether you know whether when land was withdrawn, and the Government had decided to take it as a reserve, it did not keep everybody off of it?"

To this question, counsel for the Government objected. Whereupon, the Court asked counsel for the defendant Hyde, "What is the importance of that"? Counsel for the defendant Hyde replied that, as the Government had thought it worth while to ask this witness as to the situation of lands for the purpose of claiming that they were worthless, the defendants claimed that they ought to have the right to inquire whether the lands were worth anything to the United States, for any purpose—that while land on the mountain side might not be of any particular value for the purpose of those who filed these applications, it might be of great importance to the United States to be the owner of it; because, otherwise, it could not keep people off the forest reserves, and that gave the land a value.

"The Court: That is simply an argument of the case. When Congress made provision to exchange lands, evidently it cared something about getting control of the lands within the reserve. There is no necessity to call attention to that. That is matter of law, and

902 a matter which will go to the jury as one of the considerations in the case, of course. But as the whole claim of the Government is that these men got these lands in places where nobody would ever want to settle, for the purpose of exchange under that act—that is the whole bearing of it, as I understand it."

The Court refused to allow the witness to answer the question. To this ruling counsel for the defendants duly excepted.

*Walter K. Slack (Recalled).*

By Mr. BAKER:

At this point there was shown to this witness, by counsel for the Government, Exhibit No. 407 and he was asked to examine same

and state in whose handwriting it was. He answered: I cannot swear positively to the handwriting. In my opinion it is the writing of one of the Miss McGillens; I don't know which one. They both worked for John A. Benson at one time and Miss Agnes McGillen worked for Mr. Hyde later. I think at the date of this paper, February 23, 1903, Miss Agnes McGillen was working for Mr. Hyde and the other one for Mr. Benson.

Witness was then shown Exhibit No. 408, and was asked to look at the writing in the body in ink and state in whose handwriting it was; and he answered: This is the same handwriting as in Exhibit No. 407. He was then asked to look at the word "Sign," in lead pencil in Exhibit No. 408, and state in whose handwriting that was; and he answered: It looks very much like the handwriting of F. A. Hyde, I believe it is Mr. F. A. Hyde's handwriting.

Exhibit No. 408 was then shown to the jury and their attention was called to the word "Sign" in lead pencil.

(Exhibits No. 407 & 408 are the same papers as those that George J. Knox testified were brought to him by his father. See testimony of George J. Knox.)

At that point, counsel for the Government having proved the genuineness of certain letters, that they were sent to the defendant Dimond by the defendant Hyde, and to the defendant Hyde by the defendant Dimond, offered the same in evidence, and they are as follows:

"EXHIBIT No. 85.

Written from Dictation.

F. A. Hyde, 415 Montgomery Street.

D. SAN FRANCISCO, CAL., August 22nd, 1901.  
Mr. Henry P. Dimond, c/o Britton & Gray, Washington, D. C.

"DEAR SIR: The case in which you entered your appearance for me, now pending before the Secretary of the Interior on motion for review, involves most of the questions which we seek to have adjudicated, and it will be well for you to familiarize yourself with all of the arguments advanced by Keigwin in his brief.

We claim first, that the Secretary errs in holding that the Interior Department can say whether or not he will accept a relinquishment to the United States. The law does not give him any such power. It grants the right of selection where a surrender *has been made*,  
904 not where a surrender has been accepted by the Interior Department. The title to the United States passes, just the same as to an individual when the deed is recorded.

"Second. There are sixteen different tracts in each section and the right to select exists for each separate tract.

"Third. Whatever may be the decision in this matter, my deed was executed at a time when another rule prevailed in the General Land Office.

"I surrendered 308.80 acres, and it is improbable that I can find

that exact amount to select somewhere else. To require it is to defeat the working and intent of the Act. Although I made separate selections, I have in fact selected the full amount due me by such surrender and under the decision which you will find quoted in Keigwin's brief, the selections became legal when completed, even though prior to that time unauthorized.

I think Britton & Gray will be willing to give you any assistance that you require in this case, and you can get ideas from them and from the others. Study up the swamp basis case and talk over the same with Britton & Gray. I find that it helps materially to have some one at their elbows to keep alive their interest.

Yours truly,  
(Signed)

F. A. HYDE.

905

"EXHIBIT No. 84.

"Hyde to Dimond.

Subject: Approval of Forest Reserve Lieu Land.

SEPT. 2, 1901.

"I wish you would ascertain if it is the rule of the Commissioner's office not to approve any selection based on a surrender of Forest Land until all of the selections are in a condition to be approved.

"Supposing such to be the case, I wish you would talk with Britton and Gray and the clerk in charge of the Division, and suggest that we file new surrenders aggregating the different applications. For instance, if I have surrendered 1000 acres in one deed, and have made five applications, I could make five new deeds, each one of them describing the land in some one of the five applications. This would give them a chance to act upon each surrender by itself.

"In order that you may have a case to bring before the office, I will ask you to see what it is that prevents the approval of the enclosed list of selections. It is not necessary for you to go through the whole list, but in examining them you can find if the Commissioner holds as indicated, or you may be able to get full information from Holcomb and Keigin. If such is the case, it occurs to me to meet it by deeding new surrenders, as described above.

If I do segregate these surrenders, then I want to know if I must record them, or can send them on to you to be filed with the case, and lastly, will I have to get new abstracts. It would not seem necessary, for of course, I could not have sold or encumbered the title after having deeded to the U. S. What I want to do is to make  
906 each case separate, so it can be acted upon without reference to other cases.

Very truly yours,  
(Signed in pencil.)

F. A. HYDE.

I enclosure.

(Memorandum in pencil.) H. & K. Have entered appearance in a number of my cases but only to secure approvals. If there is an appeal you will attend to it."



In re Approval of Forest Lieu Lands.

Dimond to Hyde.

OCTOBER 5, 1901.

Replying to yours of Sept. 2, the rule now is that *no* selection based on forest reserve shall be approved until *all* the selections can be approved.

"The course suggested in your letter would greatly facilitate approvals, and is in fact, the only course to pursue *for the future*; I am, however, requested to illustrate with a particular case occurring before the circular of January, 1900, and write a letter to the Commissioner thereon, to ascertain if we will be permitted to file new deeds.

If permission is granted to withdraw the original deed the new deed would have to be recorded, and if it is the 'off hand' opinion of the office that new abstracts would have to be filed to cover each case.

"I will write you further on this matter at a later date.

"Very truly,

907

"EXHIBIT No. 90.

Dimond to Hyde.

In re Britton & Gray, etc.

SEPT. 9, 1901.

"Replying to yours of the 3rd inst., which I am glad has come to hand while Mr. Browne is here, I will *so far as necessary* arrange with them.

After meeting B—I am satisfied you have in no way underestimated his ability and as I have had time to investigate the standing of the firm both professionally and as *men* in the community I cannot doubt your judgment in employing them for your important work, in fact it appears to me (subject to further confirmation) that the other people are so far below them both in ability, and what is more important here—*standing in the Department* and intimate acquaintance with the highest officials—that the more you concentrate on them, the cheaper and more thoroughly satisfactory in the long run would your work be conducted.

I naturally desire, and propose to handle as much of this work *individually* as possible, and shall only employ their assistance where I deem it necessary for the protection of your interests, and to enable me to get a clear and sound understanding of this work.

"As I stated in a former letter, I propose to work things my own way subject to conditions *as I find them*.

Very truly,

(Signed)

HENRY P. DIMOND."

908 "EXHIBIT No. 86.

Hyde to Dimond.

Subject: Transcript of Dockets 20 and 21.

Nov. 29, 1901.

I send you by express some sheets from my docket 20, embracing timber and land location in Washington which are personal property. I do not know that there was any reason for not sending them with the others, and you had better put them in their regular order by docket numbers, if you make a docket from what I have sent. You might note both on the docket and on these sheets that they are my personal locations.

I send you also transcript from my docket 21, of the selections in lieu of certain surrendered tracts, where the selections have not been approved, or where a portion of them have not been approved. Docket 20 is a docket of selections, and docket 21 is a docket of lieu land. The numbers in each section give the date when the selection was made, and refer to the selection in docket 20.

Very truly,

(Signed)

F. A. HYDE."

"EXHIBIT No. 83.

Hyde to Dimond.

Subject: Selections 1584 and 1152.

DECEMBER 7TH, 1901.

"Referring to your letter of the 26th ult. (53-A), I have already written you that T. 8 M., R. 6 N., W. M. is unsurveyed and  
909 unless our present selections are maintained we will lose the land entirely. You must claim that an illegal selection is not a withdrawal of the land, and hence the Clarke selection was not a bar to its reselection by me. I would like to have you employ Britton & Gray in this case. We must not lose the land until we have exhausted every effort to defend the title. It appears to me that Clarke's statement will be material and useful; it shows that there was no conflict as to the title; that the first selection was a mistake and that the second selection was made for the same interests.

Yours truly,

(Signed)

F. A. HYDE.

(Memorandum in ink:) "You have probably received the letter since yours of the 26.

(Memorandum in pencil:) "Submit to Browne.

D."

## "EXHIBIT No. 91.

Hyde to Dimond.

Subject: Legislation Affecting Act of 1897.

DEC. 23, 1901.

"I received your cipher telegram, which interpreted reads as follows:

'Do you desire me actively oppose adverse legislation. Very important that we act immediately. Bill has been presented repealing Act of '97. Work should be commenced immediately. Full particulars by letter to day.'

"I have never been able to make any money in a general scramble with curb-stone brokers, for I cannot work for a five per cent  
910 commission, nor can I spend my time hunting for business.

My only advantage over others is where I have a monopoly of brains or opportunity. When the Act of 1897 was passed, I first saw its effect, and I set to work to gather in all the cheap lands that I could. Just as soon as the others found it out they came into competition, and the prices were raised so that I have never since been able to purchase lands to any better advantage than others could—and most of my business has therefore been confined to the sale of my original holdings.

"After I had completed the surrender to the U. S. of the lands which I purchased when the Act was new, if the law had been repealed, it would have been much to my advantage.

"The present policy of the Department is not to recommend any reserves until the Act is repealed or modified, but it has been suggested that the President being strongly in favor of forest reserves, will over-rule this policy.

"In considering the question, it must be borne in mind that I have an interest in the creation of forest reserves independent of the Act of 1897, to wit, the State lien, and herein is where I have an advantage over others, but it is a very difficult question for me to settle. There are several things to consider.

"First, I might spend a lot of money trying to beat the repeal and not accomplish it.

"Second, If the bill is not repealed, the Department may impress upon the President the gross injustice of the law, and he may decline to make further reserves.

"Third, Even if he is willing to make them, the initiative must be taken by the land office, and the Secretary may postpone  
action.

911 "Fourth, If no reserves are created, I lose an advantage in dealing in State lien.

"Fifth, The chances are that the reserves will be discouraged while this present law is in existence.

"Sixth, If, notwithstanding the law, reserves should be created, every one else has the same chance to bid for private lands that I

have, and they will pay more than I will, and these lands come in competition with the State lieu in California.

"You see therefore the uncertainties of my position. I may make a mistake whichever course I take, but in view of the fact that we do not control the situation, that it is not for us to say whether the Act shall be repealed or not, and that the utmost effort on our part can only influence and not determine the result, and of the uncertainty of which result is desirable, I think the best way is to let the legislation of the future take care of itself, and confine your attention to the protection of existing surrenders. Here comes in another consideration.

"If the Act is repealed, they will not get at it until some time in June, and we have until that time to close up the Seligman deal and get the land surrendered to the U. S. If the S. F. Mountain Reserve is created under agreement with the Secretary that lieu land shall be selected, it will strengthen the suggested protection of existing surrenders, rather than otherwise. I think there can be no trouble about getting such a proviso, and in doing so we can get a Congressional interpretation of the rights under the deeds, which will practically overrule the Secretary's interpretation thereof.

912 For instance, it might be provided as follows:

"That nothing herein contained shall affect the right of those who have executed and recorded deeds to the U. S. of lands within existing forest reserves, to make selection or selections in lieu thereof under laws existing at the time such surrenders were made, until the full area of the surrendered land has been selected."

"It can be argued that this provision is not only justice, but law, for Congress would not have the right to disturb existing surrenders, although it would be best to fortify this right by Congressional approval.

"The clients of Britton and Gray will doubtless have sufficient interest in protecting existing surrenders to necessitate their making a vigorous fight to that end. You can find out what they propose to do, and if they are not concerned in the matter, you will have to employ them. The retaining fee already paid would include this service.

Very truly,  
(Signed)

F. A. HYDE,  
C.

"EXHIBIT No. 87.

Hyde to Dimond.

Subject: Important Business.

JAN. 10, 1902.

There are two matters on hand, our success or failure in which is a matter of great concern to me. First, the Swamp lieu land basis case.

I presume that Browne is sufficiently alive to the importance of this, but it will do no harm for you to talk to him occasionally about it. The Hart brief was very full and com-

plete, and I think should be placed before Vandeventer in its entirety, but I look to Browne's influence more than anything else. We must not lose this case.

Second, the Act of 1897 before Congress. I hope the act will be repealed, if we succeed in getting in the proviso for the protection of existing surrenders, and this you can regard as serious business, worthy of your most earnest attention. The proviso will undoubtedly be submitted to the Secretary of the Interior for his consideration. I wish Browne could fix the matter with them first, and get them to recommend it. If it could come from the Department, it would very much simplify the work with the members of Congress. It may be suggested, however, that if we go first to the Secretary, he may draw up such an amendment as will do us very little good, whereas, if we work this first with the members of Congress, and have it go from them to the Secretary, he will have to make his objections to something already formulated, and such objections can be combated.

I think you took with you a copy of the brief before the Secretary in the case of 20-359, which was prepared by Keigwin, and which very fully discussed the question of vested rights under the Act. Your line of argument will be that these old surrenders are good in law as well as justice, but that the matter should be made so plain that the question of law will not be left to executive officers to decide, especially in view of the difference of opinion liable to occur in such cases.

Very truly,

F. A. HYDE."

914

EXHIBIT No. 88.

Subject: E. P. McCormack's Trip to Washington.

JAN. 13, 1902.

I send you herewith copy of a letter I have written to E. P. McCormack. He did not tell me where he would stay in Washington, and if he does not get my letter and find you I wish you would hunt him up at some of the hotels.

He is a man of a great deal of influence, and the best friend I have in Oregon, especially when it comes to matters before the Legislature. He can probably do more with the Oregon delegation than any one I could get hold of, and I want his influence in the matter of the amendment to the amendment to the Act of 1897.

Very truly,

F. A. HYDE."

EXHIBIT No. 89.

Hyde to Dimond.

Subject: Procedure in Regard to Repeal of Act of 1897.

FEB. 6, 1902.

Please send me a list of the members of the Public Lands Committees in the Senate and House. Put in their full names, their

States and Districts. I propose, unless you advise to the contrary, to send to each one of them a short argument in favor of our proviso to any bill repealing the Act of 1897. I shall not, of course, send this in my own name, but I thought I would have it printed as a letter from some prominent attorney to the Chairman of the Committee, and then have the letter sent to some of the constituents of these committee men and write a letter to them urging that the views in this argument be considered, or I might just send the argument to the Chairman and then have short letters written embodying the same views in different words.

You might also give me the names of the Senators and Congressmen who have introduced bills to repeal or modify the Act of 1897, and we could have letters sent from various parts of the country direct to them.

I do not suppose it is expected that any bill will be passed this year, but that the bills will be acted upon by the Committees and then embraced in the general appropriation bill, the same as has been done heretofore. This renders it extremely difficult for us to follow legislation because it will come up and be disposed of in a day.

Very truly,

F. A. HYDE.

"EXHIBIT No. 82.

Hyde to Dimond.

Subject: Forest Reserve Selection 3570.

FEB. 13, 1902.

You advised me that on the 5th inst. the Commissioner rejected the N. P. R. R. Co.'s selection in 6 N. 4 E. We are very anxious to have this selection approved, as you are aware, and it has been made special. The ground for rejecting the R. R. list appears to have been that the land is unsurveyed. There is still another ground for rejection, as I understand it, and that is that we had previously selected the land, but the R. R. selection includes land that we did not apply for. There is not the slightest chance for them to get our land, and hence I wish you would ask Britton & Gray if they will waive the right of appeal for the land we have selected, and allow us to obtain our approval. I think this is quite important, for just now they probably will not observe that the land was reserved by the State at the time we made our selection. It should not be forgotten, of course, that Britton & Gray are against us in this case, and it might be their duty to advise their clients to re-select the land after survey, and thus defeat our rights, but I do not apprehend that they will go out of their way to do this. Telegraph to me whether or not the appeal will be waived, for if not, I shall write directly to the Land Commissioner of the N. P. R. R. Co. If you hear any suggestion that our selection is illegal in its inception, telegraph that to me so that I can put in a reapplication but otherwise I do not wish to do anything that will call the matter

to the attention of the Department. I should claim that the notice I gave after the survey was in fact a re-selection.

Very truly,

F. A. HYDE."

(Memorandum in ink:) "Have just sent you a telegram on the subject."

"EXHIBIT No. 69.

Hyde to Dimond.

Subject: Selections in 6 N. 4 & 5 E.

MAR. 3, 1902.

The land in 6 N. 4 and 5 E. W. M., has been sold. We 917 get only \$14.50 an acre, and the purchaser pays \$18. The difference goes to three different middle men. I had no business to have allowed the land to be sold, for it is worth three times what we are to get for it. However, the sooner we get those approvals, the sooner we get the money, as the contract is that just as soon as the approvals are made and the deeds delivered to the Bank, the money is to be paid. Therefore, please telegraph me whenever any location is approved.

I understand that some of them were sent directly to the mineral division. If the order for making them special is good in one division, it ought to be in another, hence I would suppose they ought to be out of the mineral division and on their way by this time. You and Holcomb and Keegin together should push the matter.

Location 3144, 20/467, seems not to have been rejected or objected to so far. How does it stand.

Very truly,

F. A. HYDE."

(Memorandum in pencil:) "Look up and see if all necessary papers are on file. Ans. Mch. 11."

"EXHIBIT No. 70.

Hyde to Dimond.

Subject: Additional Papers in L. S. 3571.

MARCH 24, 1902.

By letter R. Feb. 19th, the Commissioner called for certain additional abstracts of title as to the base lands in lieu selection 3571.

I send them to you today by registered mail. I will not take 918 the trouble to make a list thereof. I think you can go over them carefully and see that everything is complied with, and that the papers are put together in the right shape, and filed with the right kind of a letter. You can do it better there than I can here.

The Commissioner calls for certificate from the Clerk of the Court that there are no unrecorded judgments that could be a lien on the land. I had no trouble in getting them from San Bernardino, but the County Clerk at Ventura would not give his certificate, *not* make an examination. To get around this, I procured a letter from him stating that giving such certificate was not part of his duty, and declining to do so, and I got the certificate of the Abstract Company and the affidavit of the Manager. That is the best we can do. There is no law that can compel a County Clerk to give such certificate if he does not want to.

There is one case here where we may have trouble, and that is in the abstract for Sec. 36, T. 6 N. R. 19 W. This is where Lake got in one of his blackmails. You will find on page- 6 and 7 notice of motion to vacate judgment, which was submitted and denied by Court. Notice of appeal was filed, and undertaking on appeal given July 24th, 1901. This affects only 80 acres in 3571, but I have sold that whole section. The case is *not* before the Supreme Court on appeal. I have no doubt that we shall win the case, but if the Commissioner intends to tie up this location until the case is tried, it will make it necessary for us to compromise with Lake, at least as to this 80 acres. I hate to pay blackmail money. I think  
919 we had better try to crowd this thing through to approval.

You will observe that the Drakenfield title was sold to the State in 1890 and the local Court has refused to entertain the motion to vacate judgment of foreclosure.

In some of the abstracts you will see a lot of mining claims noted, but they cut no figure in the case because they were made after the land went to the State and they are all of them simply part of the general craze for oil development. The mining locations were put all over the country, and have generally been abandoned since then.

In the certificates from the Abstract Company that there are no liens against the lands, they have given the names of all parties whose names are of record. Neither an abstract company nor a county clerk has a right to give a certificate that there are judgments against any land, for the judgments are not against the land, but the parties, and the names of all the parties ought to be given.

Before you file the abstracts, study them up, and if there is anything missing let me know, but I think the Commissioner's requirements have all been complied with.

Very truly,

F. A. HYDE.

(Memorandum in pencil.) "Consult Browne. Ans. Apr. 3."

"EXHIBIT No. 71.

Hyde to Dimond.

Subject - Selection 3571.

APRIL 28, 1902.

920 Mr. Benson has handed me a copy of the Com'r's letter of the 22nd inst., suspending lien selection 3571 for the following reasons



First. An appeal is pending in the Supreme Court regarding the W  $\frac{1}{2}$  of NE  $\frac{1}{4}$  Sec. 36, T. 6 N. R. 19 W., and the Commissioner requires that it be shown that the Supreme Court has passed upon the appeal. This necessitates dealings with Lake, and I wish you would see him and see if he will take 50¢ an acre for that whole selection. He can keep it tied up indefinitely in the Supreme Court. His certificate of purchase covers more than the 80 acres in question. Just how much I do not remember.

Second. On the 16th of Jan. 1889, the State ordered and directed that the contest between Yuhre and Teague be referred to the Superior Court of Ventura County, and that no further proceedings were had in the matter. The Commissioner requires that it be shown what final decision has been rendered in the contest between these parties.

With regard to this, I will send on the certificate of the Surveyor General.

It would be well for the Commissioner to study up our land laws before he writes such letters. See sections 3414-15-16-17 Political Code.

His last requirement that this selection must remain suspended until we obtain the certificate from the County Clerk that there are no judgment liens on the property means that the selection is to remain suspended indefinitely and is absurd. This may necessitate an appeal to the Interior Department.

921 I am bitterly disappointed at the action on this selection.

I do not know what we are to do about it. We can not get the certificate. The Clerk absolutely refuses to give it. I will write to him again and see what he says about it.

Very truly,

F. A. HYDE."

"EXHIBIT No. 72.

Hyde to Dimond,

Subject: Surveyor General's Certificate for L. S., 3571.

MAY 14, 1902.

In the Commissioner's decision of the 22nd of April last, calling for additional papers for 3571, he stated that it appears from the abstract of title to N.  $\frac{1}{2}$  Sec. 16, T. 7 N. R. 22 W., that certain applications were made and contest referred to Court. The writer of the decision showed his ignorance by requiring it to be shown what final decree had been rendered in the contest, although the foot note in the abstract states "no further proceedings had in the matter." Under Section 3417 P. C. when no further proceedings are had, the rights of the contestant end.

However, I have obtained from the Surveyor General a certificate in full showing all of the selections that were ever made embracing Sec. 16, T. 7 N. R. 22 W., which you can file with the papers in 3571, with a reference to section 3417 P. C., and that will dispose of one of the objections to the approval of the selection.

922 I suppose you have the Political Code there, and it would be well for you to call the attention of the Commissioner to our method of selling State lands, particularly to Article 3, Title 8, commencing with section 3494.

The Surveyor General's certificates are rather crude, but they convey all needed information.

Very truly,

F. A. HYDE."

(Memorandum in pencil.) "Ans'd May 19."

"EXHIBIT No. 73.

Hyde to Dimond.

Subject: Clerk's Certificate for L. S. 3571.

MAY 16, 1902.

I have at last succeeded in obtaining the certificate of the County Clerk called for by the Commissioner in his letter R. of April 22, 1902, and I enclose the same herewith. It certifies that there were no judgments docketed against Henry Randolph, James H. Cole, Geo. H. Hamer or F. A. Hyde & Co., existing or pending on the 27th of Feb., 1901. This was the date at which the lands were surrendered to the U. S., and the names include all of those who had anything to do with the transfer to F. A. Hyde & Co. This with a former certificate of the Surveyor General, removes two objections to the selections, and the remaining objection, as to the 80 acres in conflict with Lake, would be removed by the *amendatory*. I therefore see no reason why you can not at once get the approval of 1600 acres, and I trust that you will urge immediate action. As  
923 a matter of additional precaution, I obtained at the same time a general certificate that no suit had been brought nor are there any actions pending against the parties, this certificate not being confined to any particular date, which certificate I also enclose. The first certificate would appear to be the one required, and if the second is not necessary, please hold it for future use.

Very truly,

F. A. HYDE."

(Memorandum in pencil.) "Ans. May 24."

"EXHIBIT No. 74.

Hyde to Dimond.

Subject: Forest Lieu Selection 3571.

JAN. 2, 1903.

It is of the greatest importance that I get the approval of 3571 at an early date. I have been notified by E. A. Lawbaugh that his principals do not intend to pay for any more of the lands in 6 N

4 and 5 E. In view of the fact that there is something over \$80,000 yet due, you will see what a blow that will be to me. Looking over the contract, I see that any time before the 14th of March, 1903, they can forfeit and cancel the contract by paying \$10,000, but if all the selections are not approved by that date, they have the right to cancel the contract without forfeit, thus if I can get an approval and tender it to them before that date, then the forfeiture holds good, so it is a matter of \$10,000 to me to get the approval of 3571. I do not suppose you stand any chance to get it with Hermann, but you may with Richards, and without telling Britton & Gray  
924 of its extreme importance, I wish you would have Browne go to Richards the first thing and ask for that approval. You can tell them what a hard time we have had and that the land is sold and we must have the approval. As soon as it is approved, send me a certified copy of the letter of approval.

Lawbaugh writes that the timber has been fire-killed. My information is that the fire only runs through the center of it, but that the whole tract is damaged about 20%. It means a big loss to us, for we will have to take a reduced price for it if we sell it at all. Probably Mr. Gilbert has been over-reaching himself and has not the money to carry it on, but there is \$10,000 in the Bank at Portland that will come to us if we get an approval and present him with a deed before the 14th of March. In view of this situation, I desire you to withdraw the appeal in 3611 and I will have Mr. Clarke file an abandonment of the selection, so that we can get that approval, and perhaps a small approval will work the same forfeiture as a big one.

Yours very truly,  
(Signed)

F. A. HYDE."

(Memorandum in pencil on side of letter:) "Brown has appeal on hand. Show him."

(Memorandum in ink:) "Delay withdrawal of appeal until I send abandonment."

"EXHIBIT No. 75.

Hyde to Dimond.

Subject: Repeal of Act of 1897.

JAN. 5, 1903.

I anticipate that as Hermann has resigned, there will be no  
925 pressing effort made to repeal the Act of 1897. While I do not feel like taking the responsibility of saying that I would like to see the Act repealed, I do feel that there is not going to be much in the law for me in the future, but we must never forget to fight to protect the surrenders that have already been made.

Get a general view of all the propositions that you are there for, and let me know how things look to you.

Very truly,  
(Signed)

F. A. HYDE."

(Memorandum in ink:) "Answered Jan'y 12."

"EXHIBIT No. 78.

Hyde to Dimond.

JAN. 6, 1903.

What did you do with the certified copy of the resolution of the Miner's Association. You must have locked it up in your desk. I cannot get another certified copy nor any copy of it until after the 21st, when the Secretary returns.

Miss Dickinson says she cannot find the Angiola statements, and thinks they are locked in your desk.

Very truly,  
(Signed)

F. A. HYDE."

(Memorandum in ink:) "Ans. Jan'y 12."

926

"EXHIBIT No. 79.

Hyde to Dimond.

Subject: Restricted Aztec Lieu.

JAN. 6, 1903.

We ought to know if all that restricted Aztec lieu has been located and reported. If you can ascertain these facts from the Land Office, I wish you would let me know.

Very truly,  
(Signed)

F. A. HYDE."

(Memorandum in ink:) "Answered Jan'y 12."

"EXHIBIT No. 80.

Hyde to Dimond.

Subject: Selection 3612.

JAN. 6, 1903.

I think that selection 3612 by C. W. Clarke for the NE 1/4 of Sec. 29, T. 6 N., R. 5 E., is ready for approval. The Commissioner sent for a new abstract, and I understand from Benson that everything has been furnished. He sent the corrected abstract to Holcomb & Keegin.

Very truly,  
(Signed)

F. A. HYDE."

(Memorandum in ink:) "Answered Jan'y 12." "Press for approval."

"EXHIBIT No. 68.

Hyde to Dimond.

927

Subject: Telegrams.

JAN. 14, 1903.

In answer to yours of the 8th—I cannot see anything wrong with the two telegrams which you sent me, except that in the telegram of the 7th, the word "anything" does not belong there, it being part of the previous code word. This, however, would not be sufficient to confuse you. Possibly your edition of the Anglo-American code is not the same as mine, which is the fourth edition. I note in your later telegram that you had deciphered them. I cannot see what caused the original trouble. My telegram of the 5th was sent in answer to your telegram to Benson in which you advised the withdrawal of the contracts from the record. I have but little confidence in those people and as the Astec Company is insolvent I thought that any contracts should be in writing and properly guaranteed. As a matter of fact, nothing has as yet been done to withdraw the contracts, but if they can hold them there for two weeks without recording I suppose they could hold them for two months, and I should judge that some one has influence enough to keep them hanging. At any rate, I desire that you consider the matter carefully before we finally withdraw the contracts.

I note that you or Mr. Browne will write me a letter on the matter of suspensions, which I suppose I will receive tomorrow or later.

Very truly,

(Signed)

F. A. HYDE."

Enc."

928

"EXHIBIT No. 67.

Hyde to Dimond.

Subject: Legislation.

JAN. 14, 1903.

I should be glad to hear from you what the prospects are for legislation. Is there any movement for the repeal of the act of 1897. My impression is that now that Hermann is going out, that matter will not be pressed. The reserves in Northern California are creating a great deal of friction. It is not possible that they are intended to last, and while I do not want to join in the fight against them, lest they all be rescinded, I certainly do not want them all to become final. If you have any chance to talk with the new Commissioner, say to him that there is a good deal of land that ought to be reserved, but that these temporary reserves cover large districts where 75% of the land has been sold to private individuals. They were recklessly made, and the Commissioner ought to have some one look over the records of his own office and note those townships

which are pretty generally entered and eliminate those from the order. Then he ought to see to it that the balance are reserved by the President. It is well to have him understand that these temporary reserves simply keep people in a state of irritation. If the President makes an order, that is the end of it, and people accept it with the best grace they can.

I should like to hear anything that is going on in the Department or elsewhere.

Very truly,  
(Signed)

F. A. HYDE."

929 Counsel for the Government, having proved the genuineness of a certain letter from the defendant John A. Benson to the defendant Henry P. Dimond, dated April 11, 1902, offered the same in evidence. The letter was read to the jury and is in the words and figures following:

EXHIBIT No. 77.

John A. Benson,

Engineer. Land Agent. Dealer in Land Scrip. Lands Located and Titles Secured without Settlement. 507 Montgomery St., San Francisco, Cal.

Branch Office: Ernest A. Benson, Manager, 240 Bradbury Block, Los Angeles, Cal.

APRIL 11TH, 1902.

Henry P. Dimond, Washington, D. C.

DEAR SIR: On February 15th, 1900, we filed in the U. S. Land Office at Vancouver, Washington, the following applications, under the act of June 4, 1897:

F. A. Hyde, N. E.  $\frac{1}{4}$  of S. E. C. 20; N.  $\frac{1}{2}$  of Sec. 30; and S.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of Sec. 16 T. 8 N., R. 3 E., W. M., 560.00 acres, in lieu of E.  $\frac{1}{2}$  S. W.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  of Sec. T. 25 S., R. 33 E., M. D. M., 560.00 acres.

C. W. Clarke, E.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of Sec. 16 T. 8 N., R. 3 E., W. N., 560 acres, in lieu of S.  $\frac{1}{2}$ ; N. E.  $\frac{1}{4}$ ; and S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  of Sec. 36, T. 9 S., R. 27 E., M. D. M., 560.00 acres.

Henry C. Morris, N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of Sec. 20, T. 8 N., R. 3 E., W. M., 80. acres; in lieu of S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  of Sec. 36 T. 7 S., R. 28 E., M. D. M., 80. acres.

930 These selections were for unsurveyed lands, and were duly posted and published. I wish you would please ascertain why they were not acted upon, and let us know if there is any objection to them, and if so we would like to know it. It seems to me that there has been sufficient time since they were filed to have approved or rejected these selections and we would like to have action taken on them one way or the other.

Yours very truly,

JOHN A. BENSON."

(A portion of the lands described in the last mentioned letter are involved in the indictment.)

At this point Counsel for the Government, having proved the genuineness of certain other letters from the defendant Benson to the defendant Dimond and certain other letters from the defendant Hyde to the defendant Dimond, offered the same in evidence. The letters relate to the matter of a proposed contract between the Secretary of the Interior representing the Government of the United States, on the one part, and the owners of certain odd-numbered sections of land in the Territory of Arizona within the limits of the grant to the Santa Fe Railroad Company, on the other part. Among the owners of the lands, other than the railroad company, was a corporation known as the Aztec Land and Cattle Company represented by the Seligmans of New York. The purpose of the proposed contract was that the United States should secure title to the said odd-numbered

931 sections of land from the owners thereof, in order to include the same within the limits of the San Francisco Mountains Forest Reserve, and that the owners of said odd-numbered sections of land should secure the right to select and obtain title to other lands of the United States in exchange therefor. The letters further relate to and involve negotiations by the defendant Hyde and Benson through the defendant Dimond, the purpose of which was to obtain from the Aztec Land and Cattle Company and other owners of said lands, through the Seligmans of New York, a contract in Benson's name for the purchase of a large portion thereof.

The letters were offered in evidence for the purpose of showing the relations existing between the defendants Hyde, Benson and Dimond during the period covered by the correspondence (September 12, 1901, to April 15, 1902); also that Hyde and Benson were equally interested in the contract to which the correspondence relates.

Counsel for the defendants and each of them objected to the introduction of the letters in evidence as not relating to anything given in the indictment or in the bill of particulars.

The Court held the evidence admissible and allowed the letters to be introduced and read to the jury, stating as follows: "The rule is very broad as to the relations between alleged conspirators; and even if the evidence is not very weighty in itself I do not understand that it can be excluded, if it tends to show the intimacy between the parties and other business relations, and to make it more probable that they were engaged in a conspiracy alleged in the indictment.

932 These letters appear to show that Dimond was acting for Benson. Up to this point it has looked as if he were acting for Hyde, except as to certain claims under joint account covered by a certain contract that has been introduced in evidence."

\* \* \*

"It has seemed to be the attitude of the defense here, judging by the cross examination that Hyde and Benson were enemies; that they did have one written contract, which has been introduced in evidence, but that they would not speak to each other on the street.

I think any letters which show that they have an interest in common deals would be admissible. Of course the details of it might not be admissible; but to show the fact that they were in business together or were partners in other matters, I think is competent." To this ruling of the Court counsel for the defendants and each of them duly excepted.

Certain of the letters which were then read to the jury are in the words and figures following:

(EXHIBIT 418.)

Rec'd Sept. 19. Ans. Sept. 21.

John A. Benson.

Engineer and Land Agent. Dealer in Land Scrip. Lands Located and Title Secured without Settlement. Correspondence Solicited. 507 Montgomery St., San Francisco, Cal.

SEPTEMBER 12TH, 1901.

Mr. Henry P. Dimond.

DEAR SIR: I have had a talk with Mr. Hyde in relation to forest reserve matters, and will say this:—I have had under way for some time a proposition to purchase 27,800 acres of land situated within the San Francisco Mountain Forest Reserve at \$2.00 per acre.

The situation of the tract is this:—The Aztec Land Company own 27,800 acres of land within this reserve, which are all odd-numbered sections. When the proclamation was issued creating this Reservation, the odd sections were specifically excluded from the President's proclamation.

An agreement was made last Winter with various parties holding interests there that they might surrender their holdings to the United States, and upon the proper assurance that they would do so the Secretary of the Interior would cause to be issued a proclamation including the odd-numbered sections within said Forest Reserve in the same manner that the even ones are now included.

Coupled with this was the condition that an area equal to one-half of the lands surrendered might be selected without restriction, but an area equal to the other half must be non-timbered lands, and must be selected South of the 37th Parallel of Latitude, and South of the Tehachapi Range of Mountains.

This agreement, as I understand it, was signed by the contracting parties who were the Aztec Land Company, Robert Perrin, Dr. E. B. Perrin, and the Santa Fe-Pacific R. R. Co., on one hand, and the Secretary of the Interior on the other. The Commissioner of the General Land Office was directed to carry this agreement into effect. His first act, as I understand it, was to require that the parties to the agreement designate the land that they would select in lieu of the restricted land; that is to say, South of the 37th parallel. Then



one hitch came after another, and the transaction was not carried out.

934 I have it from very good information that the transaction may be completed, and the Proclamation issued sometime in October.

Now, in view of the restrictions and the fact that the land that may be selected by reason of the surrender of these tracts is required to be designated in advance, the price is correspondingly low, but it has been agreed by the Aztec People that they would take \$2.00 an acre.

My. Hyde and I have clients sufficient to designate this amount of land at once. It is proposed that Mr. P. N. Lilenthal of the Anglo-Californian Bank of this City be the trustee to carry this agreement into effect, both for ourselves and Messrs. J. & W. Seligman, the owners. Mr. Lilenthal has written a letter to Mr. Henry Seligman that you would call on him in my behalf, and has so written in my behalf because the negotiations have already been carried on with me thus far.

We wish you would go to New York as soon as you can, and call on Mr. Henry Seligman at the office of J. & W. Seligman on Broad Street, New York, and try and get a contract embodying what we want as outlined above.

To summarize, we want a contract with the Aztec Land Company that in the event of the odd-numbered sections owned by them that are within the limits of the San Francisco Mountain Forest Reserve are included, and made a part of said Forest Reserve, that we may purchase the same for \$2.00 per acre. We understand that in order to carry this out we must designate in advance the land we will select

by virtue of the surrender of this land as Forest Reserve, and  
935 we want it understood that Mr. P. N. Lilenthal of the Anglo-Californian Bank of this City will act for both of us. That upon delivering the Abstracts to the land, he will be paid therefor as may be agreed upon.

In other words, we want a contract that will be binding upon both the Aztec Cattle Company and myself, and we want all the details of payment for the land, etc., to be carried out through Mr. Lilenthal.

There is another tract of an equal amount of restricted, and a much larger amount of unrestricted that is owned by Dr. E. B. Perrin, with whom I have had a great deal of correspondence. After we have arranged with the Seligmans, we shall probably want you to call on him at the Raleigh Hotel in Washington. Then too, there is more of this land owned by the Santa Fé R. R. Co., with whom we may want to make arrangements, of which we will write you after we find how this matter progresses. I think Britton and Gray have the matter in hand for the Railroad Company in the matter of getting the proclamation issued, etc., so the contract with Seligman had better be carried out if possible without saying anything to them until after we get it in hand. Then you can talk to them about the other as may be thought best. Of course for

the unrestricted land we expect to pay a much higher price than \$2.00 per acre.

Yours very truly,

JOHN A. BENSON.

936 P. S.—I have submitted a draft of this letter to Mr. Hyde and he suggested that he would write to you and ask that you call on Mr. Perrin at the Raleigh Hotel in Washington, and perhaps a conversation with him would give you a better idea of the situation than my letter. I neglected to state that the Forest Reserve in question is situated in Arizona.

I think that at present Dr. Perrin is at the Waring Hotel, Saratoga Springs, New York State, and that he only visits Washington from time to time as may be necessary to look after these matters, but you can find out upon making inquiry at the Raleigh Hotel.

Of course if you can find him, you can get a good deal of information by talking with him. As I have had considerable negotiations with him, I do not think it best to mention the fact to him that we have a deal with the Seligmans, but only get information from him in relation to the tracts which he holds. It would be well if you can get a description not only of his tracts, but Seligman's as well, by legal subdivisions, etc.

In order that you may have a conference with Dr. Perrin, I enclose you a letter of introduction.

As I have promised Mr. Lilenthal that you would see the Seligmans, I think that you had better do so any way even if you talk with Dr. Perrin and find that the issuance of the proclamation is likely to be delayed sometime, because the sooner we can get a contract with the Seligmans on the line indicated, the better for us, because other parties might get to talking to them, and they might want to increase the price.

Yours truly,

J. A. B.

937

(EXHIBIT 419.)

Hyde to Dimond.

Subject: Purchase of Lien Land in S. F. Mountain Forest Reserve.

SEPT. 13, 1901.

Mr. Benson yesterday wrote you a letter relative to the proposition to purchase Forest Reserve Lien Land in the San Francisco Mountain Reserve. In all of these matters deal in Mr. Benson's name. I do not want to assume any responsibility; if he is willing to make the contracts I am willing that he should if I share in the benefits, but I do not want to share in the responsibility. He can afford to take the responsibility, because he is not responsible.

If Dr. E. B. Perrin is at the Raleigh Hotel, I think you had better see him, as the representative of Mr. Benson. Tell the Doctor that you are attending to some business there for Mr. Benson and would like to know the present status of the matter. He could give you a lot of information. The present proposition is the purchase of restricted land for \$2 an acre and unrestricted land for \$3.

Ask Britton and Gray to show you the Secretary's decision in the matter of the odd sections in this forest reserve. Between Britton and Gray and Dr. Perrin you will know the full status of the case before you talk with Seligmans.

Very truly yours,

F. A. HYDE.

Say nothing to Perrin about your negotiations with Seligman.

938

EXHIBIT 421.

John A. Benson,  
Engineer and Land Agent.  
Dealer in Land Scrip.  
Lands Located and Titles Secured Without Settlement.  
Correspondence Solicited.  
507 Montgomery Street, San Francisco, Cal.

OCTOBER 5TH, 1901.

Mr. Henry P. Dimond, c/o Britton & Gray, Washington, D. C.

DEAR SIR: I have before me your letters relative to the Seligman Forest Reserve, and replying I will state that I see no reason why we cannot handle 40,000 acres of the restricted as well as 27,800 acres, if it should come that way.

So far as the 100,000 acres of unrestricted is concerned, I note that you say that they would not want to contract it at less than \$3.75 an acre, but might be willing to contract it at \$3.50, and also that they stated that they had declined my offer of \$3.00, of which I had already been notified.

I would be willing to contract with them at \$3.50 for the whole 100,000 acres. Possibly I might get in orders so that I could contract it at \$3.75, but I am afraid that the increased quantity of Reserve thrown on the market would break the price, and so would not like to contract it above \$3.50,—if such a contract could be had in connection with the contract for the 27,800 acres of the restricted. If you see a chance to make the contract in this way, by

all means do it, and it will probably be necessary to make  
939 another trip to New York to do this, which, under the circumstances, I think it would be best to do as soon as possible.

Yours very truly,

JOHN A. BENSON.

(EXHIBIT 425.)

John A. Benson,  
Engineer, Land Agent, Dealer in Land Scrip.  
Lands Located and Title Secured Without Settlement.  
507 Montgomery St., San Francisco, Cal.

Branch Office: Ernest A. Benson, Manager.  
240 Bradbury Block, Los Angeles, Cal.

DECEMBER 28TH, 1901.

Mr. Henry P. Dimond, Washington, D. C.

DEAR SIR: The difficulty you have experienced in translating my telegrams lies in the fact that you have consulted an old edition of

the Western Union Telegraph Code while we sent them according to the Code of this year. Such telegrams as we send now, we are sending by the old code, as we have both of them. In the telegram where you could not make out the time that we asked for and thought it to be May, June or July of this year, we really only asked until the 25th of January; but as it stands now, we want to get all the time we can.

Mr. Hyde is in Los Angeles, and I think he has arranged for 50,000 acres of the restricted already, and if he completes the arrangements we will have that much of the list already.

940 I just telegraphed you as I did because I was detained by business matters, and so thought that you better go over to New York and close up with Seligman and such other contracts as you can. What we really want is to come as near as possible to controlling the whole output, both restricted and unrestricted, with the Railroad Seligmans, Saginaw Lumber Company, Perrins and all the others.

We could place 100,000 acres of the unrestricted on a moment's notice at a good round profit, and turn it into money immediately and could manage the other with very little difficulty.

\* \* \* \* \*

Yours very truly,

JOHN A. BENSON.  
L.

(EXHIBIT No. 430.)

John A. Benson,  
Engineer, Land Agent, Dealer in Land Scrip,  
Lands Located and Title Secured Without Settlement,  
507 Montgomery St., San Francisco, Cal.

Branch Office: Ernest A. Benson, Manager,  
240 Bradbury Block, Los Angeles, Cal.

SAN FRANCISCO, CAL., *January 26th, 1902.*

Mr. Henry P. Dimond, Washington, D. C.

941 DEAR SIR: Your letter of the 21st at hand. I see that you fully realize just how the situation is, and that matters are liable to be protracted considerably yet. I wish that we had the basis now so that we could use it, if we are going to, but, as you say, we have to take matters just as we get them.

I enclose you copy of a letter that I received from New Mexico, which shows the difficulty that we labor under. The conditions that exist now do not exist tomorrow, and so on, and whenever they are ready to locate with scrip, they want it located. These are only samples of what we have to contend with.

Yours very truly,

JOHN A. BENSON.

(EXHIBIT No. 31.)

Hyde to Dimond.

NEW YORK, Oct. 10, 1901.

I return the contract with the Actec Co. As I am not a party to it and not bound by its provisions I can say it is all right.

I have but little faith in the outcome for I do not think the reservation will be made but as it costs nothing, it is probably worth your ten days' time. I shall leave here in a few days' time for some quiet spot where I can see some yachts, but my mail will be forwarded. Am to see Bacon tomorrow. Shall get back home about the 1st of Nov.

Yours truly,

F. A. HYDE.

942 About twenty other letters of similar nature, from Benson to Dimond and from Hyde to Dimond, written during the period from September 12th, 1901, to April 15th, 1902, inclusive, constituting part of the correspondence referred to were also introduced in evidence and read to the jury. They all tended to prove that the defendants Hyde and Benson were jointly interested in the contract to which the correspondence relates and that in that matter their relations were friendly.

The witness was then shown Exhibits Nos. 388 and 389 referred to and identified by the witness W. J. Burns, being an envelope and a brief letter enclosed in it, and he testified that both the letter and the direction on the envelope were in the handwriting of F. A. Hyde. Also that this is the letter he referred to when he was formerly on the witness stand as having been handed by him to his attorney, Leon Samuels; and that the letter was received by him at his office at 602 California Street, in the early part of 1903.

The letter was then read to the jury and is in the words and figures following:

"EXHIBIT 389.

SATURDAY.

WALTER: I see that the address of Elizabeth Dimond on the State records is care of H. S. Morris, and the latter remembers that she was a servant in the family in 1897, when the application was filed.

So I was mistaken about Bunker's connection with it. I have  
943 sent a telegram to B. & G. as follows:

"As I have nothing to conceal if the Secretary will instruct agent to interview me I will give full information and save much investigating." I have been through my books and think I can satisfy the agents when they come.

H."

The envelope enclosing the letter, "Exhibit No. 388," was exhibited to the jury. It had upon it simply the name—Mr. W. K. Slack.

WALTER K. SLACK recalled for direct examination.

By Mr. BAKER:

This witness was shown, by the counsel for the Government, a paper dated the 24th day of February, 1898, purporting to be a deed of relinquishment by Elizabeth Dimond to the United States, of school lands in the State of California, and as to said paper he testifies as follows:

Down to "February 24th, 1898," this paper is in the handwriting of Mr. F. A. Hyde—I mean all the handwriting on the first page of the paper, except the signature. In the jurat appended to the paper, the "San Francisco" in the paper "In and for the City and County of San Francisco, State of California," below the signature of Tricou, the notary public, looks like Mr. Hyde's handwriting. The date in the jurat and the word "California" look like the handwriting of Mr. Tricou.

Thereupon, the counsel for the Government offered the said deed of relinquishment in evidence, and the same is as follows:

944

“(EXHIBIT 414.)”

Know All Men by these Presents, That Whereas, it is provided by an Act of Congress of June 4, 1897, as follows:

“That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent.”

And Whereas, I, the undersigned, am the owner of a certain tract of land (hereinafter described) included within the limits of the Sierra Forest Reservation, in the State of California, which land I desire to relinquish to the United States and select in lieu thereof an equal quantity of vacant land open to settlement;

Now therefore, I, Elizabeth Dimond of Madera County, State of California, do hereby release, remise, grant and relinquish to the United States of America, the said land, which is more particularly described as follows:

All of Section Sixteen (16) in Township Twenty eight South; of Range Thirty four east of Mount Diablo Meridian situated in the County of Kern, State of California, and containing 640 acres, and I agree to accept in lieu thereof other lands to be hereafter selected by me or my assigns, equal in area to the tract so relinquished.

Witness my hand this 24<sup>th</sup> day of February 1898.

(Signed)

ELIZABETH DIMOND

945 STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this 24th day of February, one thousand eight hundred and ninety eight, before me Henry P. Tricou, a Notary Public, in and for the said City and County of San Francisco, personally appeared

Elizabeth Dimond personally known to me to be the same person whose name is subscribed to the within instrument, and she duly acknowledged to me that she executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

(Signed) HENRY P. TRICOU,  
Notary Public in and for the City & County  
of San Francisco, State of California.

(Endorsed as follows:) (Pencil:) 1042. W. Deed Elizabeth Dimond to The United States of America. Dated — 189—. Recorded at the request of F. A. Hyde Feb. 28, A. D. 1898 at 10 mins. past 8 A. M. in 78 of Deeds page 59. Kern County Records. (Signed) F. S. Benson, Co. Recorded. Fees 1.15. (Pencil:) Sel. No. 1042, Count 26, p. 205. (Red Ink:) 1898 76111-2.

946 Counsel for the Government then proved the genuineness of a number of letters signed by the defendant F. A. Hyde and addressed, some to the Commissioner of the General Land Office at Washington, D. C., and others to the officials of various local land offices, and also of certain other papers or documents partly in the handwriting of the defendant Hyde; all of which letters, papers, and documents relate to selections involving lands described in the indictment or in the bill of particulars. The said letters, papers, or documents were then introduced in evidence. Among them were the following:

(EXHIBIT 468.)

(Written from Dictation.)

F. A. Hyde, 415 Montgomery Street.

A

SAN FRANCISCO, CAL., May 28, 1900.

The Commissioner, General Land Office,

SIR: Mrs. Eliz. Dimond selected in the U. S. Land Office at Water-ville, Washington, the following described lands:

N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E., W. M.

Frac. S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 6, T. 38 N., R. 26 E., W. M.  
(Pencil) 1037.

Frac. S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E.

Frac. S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E., W. M.

Frac. N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 6, T. 38 N., R. 26 E., W. M.

In lieu of

947 N. E.  $\frac{1}{4}$  of Sec. 16, T. 28 S., R. 34 E., M. D. M.

N. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E., W. M.  
(Pencil) 1036.

Frac. S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E., W. M.

Frac. N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E., W. M.  
(Pencil) 1035.

Fract. N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 1, T. 38 N., R. 25 E., W. M. (Pencil) 1034.

In lieu of S. E.  $\frac{1}{4}$  of Sec. 16, T. 28, S., R. 34 E., M. D. M.

Notices of these selections were, I understand, duly published and proof thereof sent to you. I send you herewith a copy of a letter dated the 2nd inst. from Mr. R. W. Starr, in which he says that by letter "P" of April 23, 1900 you called for publication of notice of the foregoing locations, and desires your attention called to the fact that publication has been made and proof thereof forwarded to you.

I trust you may find that his statements are borne out by your records and that Mrs. Dimond's selections may be released from suspension.

Yours truly,

(Signed)

F. A. HYDE,

*Att'y for Elizabeth Dimond.*

Also Exhibit No. 33: Power of attorney from F. A. Hyde to H. W. McLaughlin of Missoula, Montana, largely written in pen and ink in the handwriting of F. A. Hyde, and also Exhibits 34, 35, 38, 39, 45, 46, 47, 48, 49, 51, 57, 61, 62, & 66, being letters and powers of attorney to various parties, all signed by said F. A. Hyde and relating to said selections.

*Mrs. Rebecca L. Newman.*

Direct examination.

By Mr. BAKER:

My name is now Mrs. Rebecca L. Newman. It was formerly Mrs. Rebecca L. Strong. I know Mrs. Belle A. Curtis. I signed some papers in regard to state lands. Mrs. Curtis asked me to sign a paper in regard to the land business. But I didn't see the paper. I didn't see it to read it at all. Mrs. Curtis took me to Mr. Hyde's office and I waited until she got the paper, and she carried it to the notary and had me sign it. I signed it in the notary's office on Montgomery Street. I was told to swear to it by Mrs. Curtis, and did so; but I did not know what was in the paper. When we stepped out of the notary's office Mrs. Curtis handed me \$10. I think I signed two papers. I have met Mr. Benson but did not know he was in that business until some months after Mrs. Curtis got the position working for Mr. Hyde. When she got the position she was rooming in my house. I again met Mr. Benson in 1903. He sent for me—phoned for me to call at the office, and I went to his office. He merely handed me some papers to look at, to read, which I didn't read because I didn't know the contents to read it; and he asked me to sign my name. I signed my name as requested and \$10 was put on the desk for me. I just looked at the paper, but didn't read anything; I couldn't tell one word that was in it. And couldn't tell the names of any persons that were in the paper.



Witness was then shown application to purchase No. 12,340 and was asked to state whether or not her signature appears thereon; and she answered; "Yes; that is my writing." My signature is also on the power of attorney. I couldn't tell the name of the notary I went before. It was on Montgomery Street. I didn't know what land I was taking up, or what its character was, or whether anybody was in possession of it, or whether it was suitable for cultivation. I didn't pay any money on the land.

The papers in application No. 12,340, were then offered in evidence as embracing lands described in count 34 of the indictment.

Cross-examination.

By Mr. CAMPBELL:

I do not know that the papers Mr. Benson asked me to sign were of a domestic nature. He didn't tell me that; and I don't think so. I don't remember that he was having any domestic troubles at that time. I can't say that the papers had to do with land matters, because I didn't read them. Mr. Benson didn't explain to me that they were about domestic matters. He asked me to read the papers; but I didn't read them.

By Mr. WORTHINGTON:

I made a statement in regard to this matter about a year ago to some one representing the Government, but cannot recall his name.

I signed this statement and swore to it. I knew what was in  
950 it when I swore to it. It was read over to me, and the paper has been shown to me since by the gentleman sitting here (indicating Mr. Neubausen). Mrs. Curtis was ~~not~~ living in my house at the time I signed this paper. She had moved into the next block to me. Nobody else was present when she talked to me about signing the papers. I signed the papers in the notary's office. Nobody told me anything about what they were. I recognize the papers shown to me now only by my own signature. I do not know otherwise that they are the same papers.

Redirect examination.

By Mr. BAKER:

I think I signed two papers; but went before a notary only once; and hadn't been before a notary in regard to any other papers. Was never before a notary until Mrs. Curtis took me there. Mr. Benson was present when I signed the papers referred to in his office. Nothing was said about the \$10 they gave to me. I think Mr. Benson telephoned me to come, but said nothing about what paper I was to sign. I think I signed the paper twice.

Recross-examination.

By Mr. CAMPBELL:

The paper I signed in Benson's office was written in longhand; it was not typewriting; nor printing.

*Mrs. Tillie A. Fleischauer.*

Direct examination.

By Mr. BAKER:

I reside in San Francisco. Am acquainted with John A. Benson; and have known him for a great many years. At one time I took up some state lands. I gave Mr. Benson the privilege of doing it. He was handling my money and I told him he *would* use it in that way if he saw a chance of making something. I couldn't tell you very much about it, any more than what I have said. I signed the application at a notary's office on Montgomery Street. I just met Mr. Benson on the street—made an appointment with him to meet him there over the telephone. I don't remember the message over the telephone, or whether it was over the telephone. We were talking about the land proposition before; not just then, but at different times. The land I took up was school land in Inyo County. Did not see the land. It was school land as far as I know. I went before two different notaries. I went once to sign a deed and once to sign the application. I can't tell you the names of the notaries, only I think one was Greenblatt. Saw his name in the paper last night. I arrived in Washington a week ago. Have talked with Benson since I came, but not about my testimony in this case. Mr. Benson didn't speak to me or say anything to me about my testimony in this case, except he spoke of it in a way. I am sure he didn't tell me what to say. He said I would be called as a witness, and would likely be called any day, or something in that way.

“Q. How much money did you pay for the land? A. 952 About \$800.

“Q. How much? A. About \$800, I guess.

“Q. About \$800? A. I left the money to Mr. Benson; Mr. Benson was handling my money, and I left him to use it as he liked, and so he and Mr. Hart know more about it than I do.

“Q. I want to know how much money you paid for this land? A. Why, I said \$800.

“Q. How did you pay for it? A. Well, I just told you that Mr. Benson was handling my money, and he and Mr. Hart straightened that matter out.

“Q. Did you ever get a statement in regard to it? A. No. I got some receipts for some money that I had. He had quite a sum of money of mine at one time.

“Q. I will ask you if he did not borrow money from you? A. Yes, he did, some time ago.

“Q. And is not this the money you refer to—some that he borrowed from you? A. Yes, part of it.”

When I met Benson on the street to go to the notary's to sign the application, there was nothing said at that time about paying for the land. Can't recall how long it was that anything was said about paying for the land. Don't know where the land was situated, nor how much land I was applying for. It was a section, I suppose.

I found it out sometime afterwards. Can't recall now. I don't know whether the land was in adverse occupancy or whether it was suitable for cultivation.

953 Witness was then shown application to purchase No. 2232, filed August 16, 1897, and embracing lands described in count 1 of the indictment, and was asked to examine same and state whether her signature appears thereon; and she answered: "Yes; it does; and also on the assignment dated August 8, 1898. I don't know whether I was in Mr. Benson's office when I signed the assignment or not."

I remember the time when they were taking depositions in San Francisco, in this case. About that time I had a conversation with Mr. Benson about the case. I never could tell of it straight. I do not know Isaac Liebes. I remember seeing in the paper that his deposition was taken then. About that time I had some little talk with Mr. Benson in Mr. Campbell's office before we went upstairs; but it didn't amount to anything. Mr. Benson came and took me down to Mr. Campbell's office in an automobile. I went there to make a deposition, I believe, or to go before Judge Heacock; I don't remember which. Nothing of any importance occurred. On the way down in the automobile, we were speaking on the question, of course, but I couldn't state the conversation.

"Q. Now, let me see if I can refresh your recollection. You made a statement to Mr. Neuhausen, did you not? A. Yes.

"Q. When did you make that statement?

"Mr. BIRNEY: Is that to be done for the purpose of discrediting the witness?

"The COURT: So far such questions as these I think are permissible for the purpose of refreshing the witness's recollection. 954 When he comes to ask her what she said, another question will be presented."

To this ruling of the Court counsel for the defendants and each of them duly excepted.

"By Mr. BAKER:

"Q. Do you remember making a statement to him? A. Why, yes.

"The COURT: Ask her when it was.

"By Mr. BAKER:

"Q. When was it that you made the statement? A. Well, I wouldn't know, only I seen the date on that paper.

"Q. When was it? A. Now, I don't know whether it was—in February, I think.

"Q. February of what year? A. A year ago.

"Q. Now I will ask you whether or not you remember telling Mr. Neuhausen about this conversation which you had with Mr. Benson and Mr. Campbell in regard to this matter? A. I said something about it; yes.

"Q. Did he write it down? A. Yes.

"Q. And did he afterwards read it to you? A. Yes.

"Q. And was what he wrote correct? A. Well, in a way it was."

"Q. What do you mean by that? A. I don't know how to answer that. I should not have been questioned at that time, any-  
955 way, because I was not well enough to go down town when I was forced to go down town to look into that matter.

"Q. Now I will ask you to tell us just exactly what you told Mr. Neuhausen about the \$800 transaction.

To this question, counsel for the defendants and each of them, objected.

"The COURT: That brings us to the other point. Now, as you think back and remember about your talk with Mr. Neuhausen do you remember now about the matter? Not what you told Mr. Neuhausen; but do you remember about your talk with Mr. Benson in the automobile so that you can tell about it?

The WITNESS: Well, we were talking on this question, of course. I say, we were talking about this matter.

The COURT: He wants you to tell again, as nearly as you can, the talk you had with Mr. Benson in the automobile, just as nearly as you can remember it.

The WITNESS: Well, just as near as I can remember it, I was to make a deposition; I believe that was it.

The COURT: Go on.

The WITNESS: That is the reason I went to Mr. Campbell's office.

By Mr. BAKER:

Q. Well, what were you to say in the deposition? Was anything said about that?

The COURT: Let her go on in her own way.

A. No; nothing was said.

By Mr. BAKER:

Q. Just go on and tell what was said. A. There was no deposition made.

956 The COURT: Go on and tell the talk you had with Mr. Benson as nearly as you can.

The WITNESS: Well, I never could recall that conversation now.

By Mr. BAKER:

Q. I will ask you whether or not you did not to-day read over your affidavit that you made? A. What is it?

Q. Whether or not you did not read over to-day the affidavit that you made to Mr. Neuhausen? A. Yes; I told Mr. Neuhausen I thought I made several little mistakes in it, too.

Mr. CAMPBELL: I shall object to any question about reading the affidavit made to Mr. Neuhausen to day.

The COURT: Find out whether she pointed out the mistakes.

By Mr. BAKER:

Q. Did you point out the mistakes? A. Yes.

Q. And what were the mistakes you said you made? A. He has got a bracket around the places I want him to rectify.

Q. I want to show you now the affidavit that you read over to-day.

Mr. WORTHINGTON: Let her say it is the affidavit she read over to-day.

By Mr. BAKER:

Q. I will ask you to take and read that paper and state whether or not that is the affidavit?

957 Mr. CAMPBELL: Before whom is that sworn to?

Mr. BAKER: Before Mr. Neuhausen.

Mr. CAMPBELL: I object to it until there shall be some authority shown for Mr. Neuhausen to take the affidavit.

Mr. BAKER: I will call it a statement, then, if you wish.

Mr. CAMPBELL: I object, until there is some authority shown for Mr. Neuhausen to administer an oath in the State of California.

Mr. WORTHINGTON: Special agents have power to administer oaths.

The COURT: She may read it.

A. I have read it.

By Mr. BAKER:

Q. You say you have read it? A. I read it in the room there.

Q. Is that the same paper?

Mr. WORTHINGTON: I hope it is clearly understood that the defendants are objecting to all this conversation between the witness and Mr. Neuhausen on the ground that it is not offered under the section with which we are so familiar.

The COURT: Everything up to this point I hold is admissible without regard to that statute.

To this ruling of the Court, counsel for the defendants and each of them, duly excepted.

A. Yes sir; that is the same paper.

Looking at the paper, the part marked off in brackets, was done by Mr. Neuhausen, at my request. I told him that Mr. Benson had my money, and I gave him the privilege of investing it in that land. I think he made another correction there, and marked it in brackets.

Q. I will ask you whether or not, after having this affidavit read to you, you did not state that everything except the part marked in brackets was true? A. About true, as nearly as I can remember.

Q. I will ask you whether or not you did not state to Mr. Neuhausen the following: (Counsel here indicating to the Court the portion of the statement referred to.)

The COURT: The second paragraph, except the part enclosed in brackets, and the third paragraph, except the last sentence thereof. I think are admissible, in view of the witnesses's testimony to-day, under section 1073-A.

I think perhaps in order to make the third paragraph admissible it will be necessary to ask her what the fact was as to whether Mr. Benson did not say what is stated in that third paragraph, and then, if she denies it, you will be surprised of course, under that statement.

Q. I will ask you whether or not, when Mr. Benson called for you in the automobile, he did not tell you that he wished you to be a witness at that time for himself? A. Yes.

Q. Adding that if you did not testify for him you would have to be a witness for the Government. Did he make that statement? A. Something like it.

Q. How much like it. A. Well, I can't recollect the language exactly; I wouldn't attempt it.

959 Q. Did he say that in substance? A. Yes.

Q. Did you have a conversation with Mr. Benson and Mr. Campbell? A. In Mr. Campbell's office.

Q. Yes. A. Yes.

Q. What was that conversation about on that day? A. Well, in regard to this land matter.

Q. I will ask you whether it is not a fact that Mr. Campbell asked you certain questions which were largely suggested by Mr. Benson, and which were exactly along the lines which Mr. Benson had told you of at the house that day and on the automobile ride to Mr. Campbell's office? A. Well, there was a great many things that I would have forgotten if I had not been reminded of it again.

Q. Were or were you not asked at any time to sign a statement in Mr. Campbell's office? A. Make a deposition—yes.

Q. Just tell us about that occurrence.

\* \* \* \* \*

Q. Will you tell us, on this occasion, what happened, and whether you signed the statement? A. No; I didn't sign the statement.

Q. Tell us what occurred? A. Well, the case was dismissed, I believe, and I went home.

Q. Why did you not sign the statement? A. I didn't make any.

960 The COURT: I understood her to say the case was dismissed.  
The WITNESS: For that day.

\* \* \* \* \*

Q. I will ask you whether or not, after this time, that you went with Mr. Benson to his office in the automobile, you did not go there again? A. I think I did.

Q. Do you remember when that was, and how you came to go there? A. I don't remember that.

\* \* \* \* \*

Q. How did you come to go to Mr. Campbell's office? A. I went to Mr. Campbell's office.

Q. How did you come to go there? A. I didn't see Mr. Campbell at that time, either, the second time I went there; he wasn't in.

Q. Well, who was present? A. There was another gentleman in the office.

Q. Was Mr. Benson there? A. Yes.

Q. And who was the other gentleman? A. I don't know.

Q. Tell us what took place on that occasion. A. Well, talking about this land proposition, and about making a statement, and—

Q. Did they have a statement there? A. No.

Q. Did or did they not ask you to sign a statement? A. 961 There was no statement made.

Q. I ask you whether or not they asked you to sign a statement? A. There was no statement made to sign.

Q. Did or did they not ask you to sign a statement?

The COURT: You can say "yes" or "no" to that.

A. Well, I didn't see any statement to sign.

The COURT: Whether you did or not, they might have asked you to sign one. The question is whether they did or did not ask you to sign one.

The WITNESS: Yes; they asked me to sign a statement.

By Mr. BAKER:

Q. And did or did you not agree to do it? A. I did not.

Q. You did not agree to do it? A. No.

Q. Why not? A. Well, because I didn't feel so disposed.

Mr. BIRNEY: We object to that.

By Mr. BAKER:

Q. Did they state what statement they wanted you to sign?

Mr. CAMPBELL: Who?

By BAKER: Mr. Benson.

A. I don't think Mr. Benson said it at all.

By Mr. BAKER:

Q. Did the other person say it? A. What is the question?

Q. The question is, did they state what sort of statement they 962 wanted you to sign? A. I am just thinking. They wanted me to answer some questions on this land question; that was it.

Q. What questions? A. Well, there wasn't many put to me, because I didn't stay there very long; I didn't feel like it.

Q. What were the questions put to you? A. Something about the sale of the land, I think, was one of them.

Q. Did you refuse to say anything about that? A. I didn't say anything at all.

Q. Well, what were the other questions put to you? A. I just said there wasn't many questions put to me, because I wasn't there any length of time.

Q. Well, you refused to sign any paper, did you? A. Yes.

Q. Why? A. Well, because I didn't want to be hasty; I wanted to think the matter over.

Q. Hasty about what? A. About signing any papers.

Q. Did or did not Mr. Benson or the other party state what they wanted you to sign? I could not answer that question.

Q. Why not? A. Because I don't know how to answer it.

Q. Well, you say they wanted you to sign some statement in regard to the land transaction. Tell us just exactly what they said.

Mr. CAMPBELL: I object to it. She said they asked her some questions.

963 Mr. BAKER: Some questions—yes.

Mr. CAMPBELL: And she refused to answer them because she said she did not feel like answering.

By Mr. BAKER:

Q. Well, what questions did they ask you? Tell us.

Mr. CAMPBELL: I think, if your Honor pleases, that he has gone over that sufficiently.

The COURT: I think the responses of the witness are of such a character that the attorney has a right to question her further.

Mr. CAMPBELL: I desire to have an exception.

The COURT: Oh, an objection and exception may be noted, of course. I understand that Mr. Baker is trying to find out from her what it was they wanted her to say.

Mr. BAKER: Yes; that is it.

The COURT: She knows perfectly well—I do not say that she knows what it was, but she knows what the question is. You knew perfectly well that Mr. Baker is asking you what it was they wanted you to say there.

The WITNESS: Well, I told you that I didn't know.

By the COURT:

Q. What did they try to have you say, if anything? A. Something in regard to the sale of the land.

Q. What in regard to the sale of the land? A. Mr. Clarke buying the land.

Q. What was it about Mr. Clarke buying the land that they asked you to say or to sign? A. That was only one of the questions—the only one that I can recall.

964 Q. I do not care whether it was one or many; what was it about that? A. Something about my agreeing to sell the land to Mr. Clarke.

Q. Something about your agreeing to sell the land to Mr. Clarke? They wanted you to say that you had agreed to sell the land to Mr. Clarke? Was that it? A. They wanted to know if I had not, or something like that; I can't recall it just as it was said.

Q. And you told them you did not remember about it? A. No. I didn't make any answer. I didn't stay there for any length of time. I didn't make any statement of any kind to them.

By Mr. BAKER:

Q. Now let me ask you whether you did not tell them that you would not make any false statements, and get very angry with Mr. Benson for getting you mixed up in the matter? A. What is the question, again?

(The pending question was read aloud by the stenographer.)



A. I think I said that.

Mr. BAKER: There is one other question, the first paragraph, that I want to ask her about, if the Court please.

By Mr. BAKER:

Q. I want to ask you whether or not you did not state to Mr. Neuhausen, in referring to the manner in which you obtained the land, as follows:

“One day not more than ten years ago, Mr. Benson called me up on the telephone at my residence, No. 727 H Street—I had moved from 1605½ Devisadero Street—and made an appointment to meet me at the corner of Montgomery and Sacramento Streets. He did not state over the telephone what he wanted to see me about; but when he met me at the street corner he asked me to go to a notary on Montgomery Street near Sacramento Street and sign some papers.”

Did you make that statement to Mr. Neuhausen? A. Yes.

Q. Is that true? A. Yes; that is true?

Q. And did you make the further statement:

“I went with Mr. Benson and signed the papers before the notary, but I have not the slightest idea what the nature of the papers was. I signed the papers because I didn't wish to hurt Mr. Benson's feelings by declining to do so. I did not examine the papers at all, and Mr. Benson did not tell me that they related to land.”

Did you make that statement to Mr. Neuhausen? A. Yes; I made the statement.

Q. Is that so? A. Yes.

Mr. BAKER: That is all.

Mr. WORTHINGTON: Will your Honor say to the jury what these statements that she made to Mr. Neuhausen have been read for?

The COURT: Oh, yes; I will. So far as any contradiction is concerned, this last, of course, is not a contradiction. She says now that that statement is true.

The WITNESS: Those two questions you put to me.

The COURT: She modifies her former testimony to that extent. She says these latter statements are true now, as I understand it.

966 Mr. BAKER: Yes.

The COURT: But I think there was a part of it that was a contradiction.

Mr. BAKER: This part—I had better put the question to her, and then we will have it on the record.

Mr. WORTHINGTON: Before we go on, she has also said that she made this statement to Mr. Neuhausen; and I ask your Honor to instruct the jury as to any statements which she made to Mr. Neuhausen, that she is allowed to state what she said to Mr. Neuhausen only for the purpose of discrediting her, and not for the purpose of showing that the statements she made to Mr. Neuhausen are true.

The COURT: I think it stands like this: She was asked what she had said to Mr. Neuhausen, and what statements she had made and

signed. So far as she says that that was true, I allow that as refreshing her recollection about the matter. She remembers that she made a statement formerly to him; and now, on hearing it read and seeing it, she says it was true. So far it is a mere refreshment of her recollection. But where the statement that she formerly made to Mr. Neuhausen contradicts what she says here, it simply discredits her to that extent—either her memory or her veracity. And the fact that she said it to Mr. Neuhausen is not any evidence that it was true.

That I understand to be the situation.

Mr. BAKER: Now I will ask one more question.

By Mr. BAKER:

Q. I will ask you whether or not, in the same statement that you made to Mr. Neuhausen, you did not state as follows:

967 "He"—referring to Mr. Benson—"told me that I would be called on that day to go down to court and give testimony, and he further said that he wished me to testify that I had sold the land for \$800 to C. W. Clarke, and to state in what county the land was. I think Mr. Benson stated that the land was in Inyo County, California. He added that he wished me to go with him to the office of Attorney Campbell and make a statement along the lines indicated. I went with him in his automobile to Mr. Campbell's office. I sat downstairs for a while until Mr. Benson had seen Mr. Campbell up stairs. Then Mr. Benson came and called me, and I went into Campbell's office with him. During the interview that followed I was with Mr. Benson and Mr. Campbell. Mr. Campbell asked me questions which were largely suggested by Mr. Benson, and which were exactly along the same lines which Mr. Benson had told me at my house that same day and on the automobile ride to Mr. Campbell's office."

I will ask you whether or not you made that statement to Mr. Neuhausen?

Mr. CAMPBELL: If the Court please, that is the third time that statement has been read to this lady.

The COURT: It is proper to be read at this time for the purpose for which it is read.

Mr. CAMPBELL: I object to it on that ground.

The COURT: The objection is overruled, and an exception is noted.

To this ruling of the Court counsel for the defendants and each of them duly excepted.

By Mr. BAKER:

968 Q. Now I will ask you whether or not you made that statement to Mr. Neuhausen? A. Yes.

Q. Is it true? A. As near as I can remember, yes; it is a true statement.

Mr. BAKER: That is all.

The COURT: The jury will understand that so far as this state-

ment made to Mr. Neuhausen differs from the statement she makes to-day, it is only admitted to affect her credibility as a witness.

Cross-examination.

By Mr. CAMPBELL:

Prior to 1897, Mr. Benson had quite considerable money of mine. He told me I could make some money by taking up a piece of land. I met him down town some place. He had the papers prepared, and I went before a notary public with him and signed them. I knew I was signing papers in relation to taking up a piece of land, although I might not have known the description of the land. Afterwards I went to a notary public and signed another paper, and after that Mr. Benson told me the land was sold. I know I got eight hundred dollars. I don't know just what the land brought up to date. I did get a certain sum of money from Mr. Hart, but I don't know how much. The money I got from Mr. Hart was the money I understood Benson owed me for the purchase price of that land.

That is my signature to the application; that is not a forgery. I am not a fictitious person. My signature on the power of 969 attorney. I appeared before a notary. My signature on the assignment. I appeared before the notary. None of these signatures are forgeries.

I made the statement to Mr. Neuhausen last year. There were two gentlemen who came to my house and asked me to come down town.

I remember the time that they were preparing to take depositions in this case in San Francisco. I saw Mr. Benson in relation to my making a deposition, and he brought me to your (Campbell's) office. Benson told me he wanted me to testify in this case and give my deposition in San Francisco. I did not at that time say to him that it was so long ago and I had so much trouble that I could not remember any of the details in the matter. I told him I could not remember to whom the land had been sold or what was the exact amount I got for it. I said that in your office. I said that Mr. Benson had told me the land had been sold to Mr. Clarke and that the profit I made was \$800. Neither Mr. Benson nor anyone else asked me or intimated to me that they wanted me to tell anything but the truth.

Redirect examination.

By Mr. BAKER:

Loaned Mr. Benson \$2500 the first time; can't say when; it has been so long ago. Haven't loaned him any since. He had been paying off some. Would not know Greenblatt, the notary, if I saw him, but I am sure he is the man I went before. I remember going before him. Have seen my name on the paper, and I know where his office was. It was on Montgomery Street. I went with Mr.

Benson. Could not state when; could not state how long 970 it was after I signed the first papers; don't remember. It did not make any impression on my mind. Think it was longer than three weeks but really can't state.

*Mrs. Nellie I. Dutton.*

Direct examination.

By Mr. BAKER:

Reside in San Francisco. In the year of 1897, the latter part, but prior to November, my husband's brother, Mr. S. E. Dutton, told us about the opportunity to take up these sections of land, and said he supposed it would be a good thing for us to do, and I did it. I went to a notary public in San Francisco, and signed the paper. Don't remember the nature of it. I think I glanced over it. I was was with my husband. I think we both glanced over it. What the contents were I cannot say. I don't know what was done with the paper when I signed it.

Not personally acquainted with Hyde. Was in his office once—in the same year, I believe. I went from Mr. Hyde's office to Tricou's office on Montgomery Street. He was a notary. While there, I signed a paper, and I believe I went back. Think there was some money transaction down there. No money was paid to me that I know of, and none paid out, to my knowledge.

Witness was then shown application to purchase No. 2242, in the name of Nellie I. Dutton, filed August 17, 1897, (referring to lands in bill of particulars), and asked to state whether her signature appears thereon. She answered "Yes sir; that is my signature."

I don't know when I signed that. I have seen that paper  
971 since I came here but not before, that I could now recognize.

My signature is also on the power of attorney. I went before notary Tricou, and also went before a notary in Deca, Alaska, at that time. I don't know James C. King or James L. King and have no memory of appearing before him. I went to Alaska in November, 1897, and stayed until June 1898. I went again to Alaska in August, 1898, and remained until January 1899.

I know Frances C. Dutton. She died in November, 1902. I don't know that she signed an application for school lands. I know there was talk about it, at the same time that mine was spoken of. She was my husband's mother and we were living in the same house at the time. She was then in her 82nd year. She was strong in a way; but she wasn't in the habit of going out. Her physical condition was such that she did not take any trips at all. She did not go out of the house. Once during the year 1897, early in the year, I went down town with her, but after that I think she did not go out again. I was not present when she signed any paper.

Witness was then shown application to purchase No. 2255, in the name of Frances C. Dutton, filed August 17, 1897 (referring to lands in the bill of particulars), and was asked whether she recognized the handwriting of the signature, and if so, to state it. She answered: I will say that is her signature; I think; still I don't know that she did it. The signature on the power of attorney is just the same.

I do not know how many acres of land I took up. It was supposed to be a section. I had no knowledge of the character of the

land, or whether it was suitable for cultivation. I knew nothing about it.

972 The papers shown to this witness were introduced in evidence.

While in Alaska I acknowledged one paper, I believe, in regard to this land. Didn't examine it very much. I just simply glanced over it. I believe it was more from the conversation with my husband than anything else that I think it was in reference to this land. I am pretty sure it was. It was before a notary by the name of Monteith.

Cross-examination.

By Mr. WORTHINGTON:

My husband is living. My husband, myself, and his mother, Mrs. Frances C. Dutton, composed the household when I signed this application. S. E. Dutton was my husband's brother. He was married and lived, I think, at the time on Sacramento Street in San Francisco. The families visited back and forth. Come into our house on Sundays sometimes. It was at one time when S. E. Dutton came into the house—I think it was in the evening—when there were present only myself, my husband, my mother-in-law and S. E. Dutton. Had some talk about these lands. It was several years after that that I was called upon to bring my mind back to what had occurred, so that I could try to remember it—at least ten years after that—and after this lapse I couldn't remember the details of the conversation. Don't remember any conversation, at that meeting as to whether my mother-in-law should advance the \$25 at the time my application was made.

Mr. S. E. Dutton is dead. He brought the subject to our attention, and whatever was done by the rest of us was done in  
973 pursuance of his suggestion. Don't remember that he said anything about putting up \$25. If anything was said, it was said to my husband. I was present during the conversation, but I did not know about that. I don't remember.

My husband's mother, Mrs. Frances Dutton, had some means. I don't remember who was going to attend to the financial part of the transaction. I don't remember going before a notary by the name of King. I know I went before some notary on Montgomery Street whose name was Tricou. Went before a notary public once in San Francisco and once in Alaska about this business. Don't think I executed any other papers in those years before a notary. I am quite sure I did not.

Don't know Tricou personally. Only time I ever appeared before him as I remember. Since he has been here, I have met him and recognized him as the man that I went before. Don't know where the office of King, the notary, is. I know there was such a man, and that's all.

I believe that is my mother-in-law's signature. I knew at the time she had signed such a paper and that she was going to make

an application. Whatever she did in that regard she did independently of my memory. I know I didn't go with her.

I knew I was making an application for State lands and I understood it to be for a section, 640 acres. I understood that I was taking it up for my own benefit and not for anybody else. I signed some papers some months later in Alaska about it. These were sent up from San Francisco to us but I don't know by whom.

974 I suppose they were sent to my husband; things generally were. I suppose I had some conversation with my husband about that paper. I don't know; I don't remember. Know that we went from our home to the notary's and signed the papers before him. Knew it was something with reference to the land for which we had applied. I suppose my husband knew about the contents of the paper that I signed in Alaska. We had acted on his suggestion as usual. Don't recall having any conversation about it except that he told me that the land had been sold and that we were making a sale of it. I remember having a talk with him about what I was going to get out of it. The supposition was that there would be a little profit. I don't recall much of the conversation. At the time I signed that paper in Alaska I did not understand that my husband was selling the land. I think we had that after we came back, between June and August of 1898, or it was in 1899, after we returned. My husband was acting for me in the matter. When I signed that paper in Alaska, I don't remember anything being said as to whether my husband was to act further for me in the matter.

I don't remember the nature of the papers signed in Alaska, but it seems to me, as I recollect it, that after that, when we came down to between June and August of 1898, or 1899, that we went to Hyde's office and settled up the thing. It seems to me that at the settling time I went before Tricou, with an office boy from Mr. Hyde's office, and my husband. While there, I signed a paper and I believe we went back to Mr. Hyde's office and the money was settled. It seems to me that it was something in the

975 neighborhood of \$300.00 that Mr. Hyde paid to my husband. I cannot tell whether this was before the Alaska trip, or afterwards, but it was when we went from Mr. Hyde's office to the notary's. I believe it was afterwards.

I cannot tell which is the first paper, the transactions have so run together in my mind. I don't know what my mother-in-law did, if anything, about selling an interest in the land. She didn't go with me and I didn't go with her. I don't know whether my husband, E. G. Dutton, put up any money for me in this transaction, or whether the \$300.00 was clear of expenses, or included expenses. It seems to me that the charges were deducted at the final settlement; I am not sure. My husband Mr. Dutton, told me that he met Mr. Hyde in California market in San Francisco, when I returned from Alaska, or it may have been in the interim, when I was down on my trip, and asked him to take this land off his hands, or something in reference to the sale of it. I believe Hyde offered to pay him so much an acre,

and I think that was the thing that was done. I am not sure. I believe that was what brought about this settlement. Before I came on the stand I had not made any statement and signed it. I have had conversations, of course.

Redirect examination.

By Mr. BAKER:

I supposed at the time that I purchased this property for my own use and benefit. Didn't know where it was. Didn't purchase it for any special use. Merely as an investment, to get some money out of it. At the time I purchased it, nothing was said about my being able to get lieu lands for it. Don't know what it cost an acre.

976

*Annie King Dutton.*

By Mr. BAKER:

I resided in 1897, at 2511 Sacramento Street, California. I think I saw some papers that I signed, but don't remember the occurrence particularly. If course, I have signed papers. I am not acquainted with James L. King, and don't remember ever appearing before him as notary. I have gone through a great deal in the last ten years and this particular instance has gone out of my mind. I don't remember.

Witness was then shown application to purchase No. 6478, in the name of Annie A. Dutton, filed August 26, 1897 (referring to lands in the bill of particulars), and asked whether her signature appears thereon. She answered: Yes, this Annie A. Dutton I signed myself, and that is my signature. The same as to the power of attorney. I trusted everything to my husband, and I don't remember that particular paper. I remember my husband told me to take up some school lands, and I did whatever he asked me to do. I never paid any money. I never signed any other papers in regard to school lands that I remember. Leaving out these particular papers in question I don't remember at all of signing any other papers in regard to school lands. I have always gone before a notary in regard to other papers of my own; but I don't remember going before a notary for these.

My husband died in March a year ago. I am acquainted with Mrs. Nellie I. Dutton and was also acquainted with Mrs. Frances C. Dutton. I don't know anything at all about their signing papers to take up school lands. I was told that you could do it, and it was done. Nothing was said to me about the cost  
977 per acre. I left that to my husband. Nothing was said about anybody putting up any money.

Asked whether she ever got any benefit from taking up school lands, she answered: My husband, I think, got it. I am under that impression. I know of his getting some money. I did not sign any papers at that time; and did not get any money myself.

The papers referred to by the witness were then offered in evidence.



## Cross-examination.

By Mr. WORTHINGTON:

When I went before the notary to acknowledge this particular paper I do not remember who the notary was. I sometimes went before a notary to acknowledge papers in relation to private matters.

I don't remember what notaries I went before. Can't recall where his office was. I would meet my husband at his store and he always took me to some notary. Don't remember where we went, or what street the notary was on. I might have been before Mr. King, and not remember it. My husband told me I had the right to take up school lands—there might be some money in it. I then said I would do it, and let him attend to the matter for me.

Can't remember what was said afterwards, or whether there was any profit. I remember he said something to me afterwards about the matter having been closed out. I remember he told me there had been a profit of \$300.00. Don't remember how long that was after I had signed the original papers.

I am residing permanently in Washington, and expect to  
978 remain here indefinitely.

*George Delury.*

By Mr. BAKER:

I am a clerk in the recorder's office of Mona County, California. I have the records of that county here. Looking at page 248, I find there is the record of a patent of the State of California to C. W. Clarke, embracing all of Section 36, Township 3, N. R. 24 E., M. D. M., containing 640 acres. (This is the land described in the application to purchase by O. T. Zinn. See bill of particulars.)

The patent was offered in evidence; and in connection therewith a deed of relinquishment by C. W. Clarke and wife to the United States, conveying the same land.

In the regular course of business, I kept a memorandum to show at whose request deeds were recorded; and the same was filed with the deeds and entered in this book. At page 249 of the book the following entry relating to the patent referred to was offered in evidence.

"Recorded at the request of John A. Benson, November 12, 1899, at 5 minutes past 9 a. m."

There was also offered in evidence the following memorandum relating to the deed of relinquishment:

"Recorded at the request of John A. Benson, November 13, 1899, at 15 minutes past 9 a. m."

WITNESS (re-suming): At page 314 there is a patent from the State of California to Frances C. Dutton, embracing all of Section 16, township 5, N. R. 22 E., M. D. M., containing 640 acres and dated February 12, 1900.

979 (This is the same land described in the foregoing application in the name of Frances C. Dutton. See bill of particulars.)



The entry of the patent referred to was offered in evidence. Also entry at page 315, relating to said patent, as follows:

"Recorded at the request of F. A. Hyde, March 13, 1900, at 5 minutes past 9 a. m."

Also at the same page the entry and record of a deed from Frances C. Dutton to F. A. Hyde, conveying the same land, dated May 2, 1899, was offered in evidence. The entry being "Recorded at the request of F. A. Hyde, March 13, 1900, at 2 minutes past 9 o'clock."

The entry and record of two deeds, one from F. A. Hyde and wife to F. A. Hyde & Company, dated February 24, 1900, and recorded at the request of F. A. Hyde, March 13, 1900, conveying the sale land, and the other a deed of relinquishment from F. A. Hyde & Company to the United States, conveying 160 acres of the same land, dated February 27, 1900, were then offered in evidence.

The record of three additional deeds of relinquishment from F. A. Hyde & Company to the United States, each dated February 27, 1900, and conveying portions of the same land, were also offered in evidence. The record stating that each of them was recorded at the request of F. A. Hyde & Company, March 2, 1900, at 5 minutes past 9 a. m.

#### Cross-examination.

By Mr. CAMPBELL:

Any attorney or layman, or Wells-Fargo Company could send a deed to us to be recorded, and whoever sends it to us, it is  
980 entered as recorded at his request, and always returned to him.

*George Delury.*

Recalled for further direct examination.

By Mr. BAKER:

I am familiar with the recording of papers in the several offices of the Recorder of Deeds, in the State of California. The Recorder of Deeds is also called the County Recorder in California.

It is the invariable rule to put file marks on papers recorded, showing that they were recorded at the request of whoever sent them in, on such a day, at such an hour, and so many minutes past the hour, and recorded in record—of the real estate deeds and signed by the recorder. Invariable rule is that after these have been recorded they are mailed to the person who sends them in.

*Flora Liebes.*

Direct examination.

By Mr. BAKER:

I reside in San Francisco. I took up some school lands, or signed some papers for school lands, I think, about ten years ago. It was through My brother Isaac Liebes. Really I don't remember very much about it, it was so long ago. He said he was going to take up

some school land for me, and that he would attend to it for me; and I think I signed some papers. How many, I don't remember; nor where I was when I signed them. I can't remember, either whether I went before a notary. I did not pay any money, and have not received any profit from the lands. Don't know where the land is situated; and can't remember any affidavit made at any time in regard to it.

Witness was then shown application to purchase No. 6605, in the name of Flora Liebes, filed July 6, 1898 (referring to lands in count 32 of the indictment), and asked whether her signature appears thereon. She answered: "Yes, I think so. That is my signature."

She was asked to examine the paper and state whether or not she remembered making an affidavit to the contents of it; and she answered: "You are wasting time. I don't remember anything." Don't recall making any affidavit as to the land; absolutely none.

My brother attends to all my business for me. He is like a father to me, because I have no parents. He has always been. No money of mine, that I know of, was paid for the land. I don't know the defendant Benson.

The application referred to was then offered in evidence.

#### Cross-examination:

My brother attends to all of my business for me.

"Q. And you say your brother said he would take up the piece of land for you and make you some money? A. He didn't say about making some money. He said he would take up a piece of land for me."

My brother runs the furrier business of Liebes & Company, a large fur store in San Francisco. He attends to all my business; and is the head of the family.

#### 982 Recross-examination:

I don't say that whatever Isaac Liebes did in this matter was done with my knowledge, outside of saying that he would take up some land. That is all I know about it. I always leave everything to him; but I do not know what he did with this land.

*Joseph Webber.*

#### Direct examination.

By Mr. BAKER:

Reside at 1014 Masonic Avenue, San Francisco. In 1898, resided on Pacific Avenue, between Polk and Van Ness.

I am foreman now, was assistant foreman at the time with my uncle. My uncle is Isaac Liebes. My oldest brother—Isidor or Izzy,—he is dead now—told me he had a chance to take up some lands and that he intended to do it; and asked me if I wanted to take up some. I asked him how I could do it, and he told me it would cost so much money. He said, "Uncle is going to lend the money to me". He said, "If you want it, he will probably advance

it to you." I said, "If he will advance it to me, I will take up some, too." I took up some. Could not say where the land was situated. It has been so long ago that I could not say for sure whether I knew at the time where it was located. Can't remember now whether anything was said about the character of the land. I signed several papers. Don't remember the first one. It has been too long ago. If I signed one paper since that time, I must have signed a million papers, because my business in the shop where I am I sign lots of papers, and I can't tell one paper from another; but I have been signing papers for the last twenty years. I don't remember  
983 how many papers I signed in regard to this land. Can't remember whether I swore to any of them.

I didn't put up any money myself; it was advanced by my uncle. Never paid my uncle. Worked for him on salary. He never took it out of my salary.

Witness was then shown application to purchase No. 6608, Los Angeles District, in the name of Joe Weber, July 6, 1898 (referring to land in count 32 of the indictment), and asked whether his signature appears thereon. He answered: "Yes, sir; I don't know L. Meininger. I can't remember where I signed the paper. I signed some papers down at Liebes' whether that one there is included in the papers I signed, I couldn't say. I signed lots of papers where I work, but I couldn't say whether that was among the papers that I signed.

When I had the conversation with my brother about the lands, I can't remember whether any papers were brought to me about the lands or not. There were some papers there, with my brother and another man.

In my conversation with you fifteen or twenty minutes ago, you did not refer to any particular paper. You asked me if I had signed papers, and I told you yes. How many papers there were, I do not know. I told you I signed lots of papers in Liebes', and my brother was there.

Asked whether or not he knew what became of the paper he signed in regard to school lands he answered: "I couldn't answer that. That I couldn't say. I signed them and went up stairs from in there, and that was the end of it. My brother was there  
984 talking for a while. I can't remember what it was then."

I left them with my brother and this other man, whoever he was. I can't remember whether I swore to any paper. I didn't know how many acres of land I was wanting to buy. I can't remember the price just thoroughly but I think it was \$1.25, if I am right. I don't know for sure that that is the exact figures or not. I never asked my brother about the character of the land at all, or whether it was occupied by somebody, or whether it was suitable for cultivation. I have not received any money for the land.

Witness was then shown what purported to be a receipt for \$643, being "The treasurer of Los Angeles County" from Joe Weber, and was asked to state whether or not he ever paid any such sum of money; and he answered: "I just told you just now that I never paid any money out of my own pocket. It was advanced to me by

my uncle. At least my brother told my uncle to advance the money. If he paid that money there, that is all I can answer the question.

"Q. I ask you if you, yourself, ever paid to the county treasurer any money? A. Not myself, no."

Cross-examination.

By Mr. BIRNEY:

I left the matter entirely to my oldest brother. What he told me in substance was that he saw a chance to make some money out of this land. He put it somewhat that way to me. Gave me a chance. Engaged in the fur business. Worked for Liebes & Company. My uncle was a man of considerable means. Don't know Mr. 985 Meininger, the notary. I don't think I ever met the man in my life. I have signed lots of papers. I can remember one notary that I went before just lately, but outside of that I can't remember any more. I haven't any more recollection about the matter than I have already stated.

*Mrs. Helena Liebes.*

Direct examination.

By Mr. BAKER:

Reside in San Francisco. I don't remember anything about taking up any school lands. Nine or ten years ago I took up some at my husband's suggestion. That is all I know about it. I didn't pay any money. My husband attended to all my financial matters. A few years ago, I decided the property to my husband, and I think it was sold. That was five or six years ago. My husband gave me \$1400 or \$1500 out of it.

Witness was then shown application to purchase No. 2543, in the name of Helena Liebes, filed March 16, 1898, (referring to lands in count 32 of the indictment) and was asked whether her signature appears thereon; and she answered: That is my signature. Looking at the power of attorney, she stated: This looks like my signature—the power of attorney to John A. Benson. Maybe the papers were sent to my house when I signed them, as a good many other papers were. I have appeared before quite a few notaries, but I couldn't remember in this case. It is ten years ago. I don't know L. Meininger. Never met the gentleman. I don't think I ever appeared before Mr. Meininger. I have heard the name in San Francisco.

986 The application referred to was then offered in evidence, also the power of attorney.

*Harry Weber.*

Direct examination.

By Mr. BAKER:

Reside in San Francisco. Manager of Colonial Baths. Was with my uncle, Mr. Isaac Liebes, in 1898. My Brother Isador, who died,

asked me if I wanted to take up some lands. Told him I didn't have any money. He said he would speak to my uncle to advance the money, and later on he did advance the money. My brother Isador told me. I signed several papers down at the store. Don't remember who I gave them to; so long ago. Don't remember whether I swore to any. Couldn't tell what was the character of the land. Didn't know at that time. I never put up any money. Never got any profit. Don't know L. Meininger. Never acknowledged any paper before him.

Witness was then shown the papers in application No. 6304, in the name of Harry Weber, date of application June 6, 1898, (referring to lands in count 32 of the indictment) and was asked whether his signature appears thereon. He answered: Yes, sir; that is my signature.

The application was then offered in evidence.

#### Cross-examination.

By Mr. BIRNEY:

I was a pretty busy man in those days, in my uncle's fur store. Doing a large business. I was foreman down there. My brother Isador spoke to me about these lands. Could not recall what he said to me. Don't remember anything about signing any  
987 papers; too far back. It is a good many years since I have seen the application before it was handed to me here, except since I came here, just as the other gentleman showed it to me here in the court room. I don't remember where I was when I signed them; don't remember at all. There were several people around there when I signed them. I don't remember who they were. For all I know, one of them might have been a notary. That was the time I signed the papers.

#### Redirect examination.

By Mr. BAKER:

Don't know who the people were who were around there. My brother gave the papers.

*Gustave Marcus.*

#### Direct examination.

By Mr. BAKER:

Reside in San Francisco; electrical contractor. In 1898 I was the assistant Superintendent and engineer in Liebes building.

I think I signed an application for school lands. Don't know where they were located but understood they were school lands. Don't know whether it could be cultivated. When I signed it, I understood it was school lands, and I understood it was timbered land.

A friend of mine, who was my superior at the time, Isador Weber,

told me to. I personally did not put up any money, but it was put up for me. Mr. Isaac Liebes was to put it up.

988 I signed the application in the Liebes building. Don't remember who was present. I think I gave the papers, after I signed them, to Isador Weber. I forget those little incidents. Don't remember whether I swore to any of the papers. Don't remember how many papers I signed—I believe I took up 640 acres. I didn't have any knowledge of whether there was any adverse occupation or whether it was suitable for cultivation. I understood it was school lands. I can't say where school lands are situated in California I don't know. I sort of understood that school lands were timbered lands, and homestead land was for cultivation. I never paid the money that was advanced in this application. Never got any profit. I believe I signed more than one paper, but the whole transaction is so long ago. I believe I signed papers at different times. Couldn't tell the intervals; must have been over a year. Could not say now.

Witness was then shown the papers in application No. 6609, in the name of Gustave Marcus, filed July 6, 1898 (referring to lands in count 32 of the indictment) and was asked whether his signature appears thereon. He answered: "That looks like my signature." I do not know L. Meininger. I can't tell whether I ever appeared before a notary by that name. If I remember rightly, someone brought the paper to me and I signed it. If I signed it, I read it.

Witness was then asked to read the application to purchase carefully and, after reading it, to state whether or not he ever swore to the facts contained in the application, and if he did what knowledge he had of the facts at the time he swore to them. He answered:

989 "Well, I don't know whether I swore to it or—certainly this is my signature." I was guided by my superior at the time. I took his word for almost anything. I couldn't state that I had any knowledge whether anybody was in possession of the land. "Isador Weber managed the whole affair for us at the time, and he told me it is all right. And the land is good, and so forth, and some day it will be valuable, and so forth." I don't think he said anything about whether anybody was in adverse possession of the property. As to the number of acres, I was told about a section, and I understood a section was 640 acres.

Counsel for the Government then directed the witness's attention to the application to purchase where it calls first for 560 acres, and that is erased, and there is put therein 480 acres, and he was asked what knowledge, if any, he had of the change, and as to how the papers stood when he signed them. He answered: "I haven't got any knowledge about the change. I understood at the time it was a section, and I understood a section was 640 acres." I don't remember looking at the erasure or the insertion, or whether there was an erasure when I signed it.

The application to purchase, describing land as containing 560 acres, and then that is erased and 480 acres inserted, signed Gustav Marcus, and purporting to be executed June 6, 1898, by L. Mein-

inger, notary, was then introduced in evidence (land in count 32 of the indictment).

The WITNESS (resuming): That looks like my signature on the power of attorney dated June 6, 1898, to John A. Benson. The power of attorney was offered in evidence.

990 Witness was then shown what purported to be a receipt by the treasurer of Los Angeles County for \$432.80—received from Gustav Marcus; and he testified that personally he did not pay it, and never had paid it.

*Isaac Liebes.*

Direct examination.

By MR. BAKER:

Reside in San Francisco. Merchant now and in 1898. I believe I signed an application to take up some school lands. Could not tell where the land was situated, nor the character of it, from my own knowledge; nor as to its adverse occupation. From my own knowledge, didn't know these things when I took it up. I couldn't testify now where I was when I signed the application. Can't remember the act itself of going before a notary. It was supposed to be a section of land that I took up. It was about the time that a great many merchants in San Francisco and their friends were taking up school lands. It was supposed that they would get some good land, and they availed themselves of their right to take it. In the course of conversation, I understood that to be the case, and Mr. Benson being a very good client or customer, rather, of our firm, H. Liebes & Company, I spoke to him about it. He said that he could get some good lands, good suitable lands. Couldn't say whether I mentioned it first or Benson. I believe I asked him the question. I would not say that positively, though. I told him I would take up some of the land, and he prepared the paper and sent it to me. He prepared papers for others that I knew of—for my wife, Helena Liebes, Miss Flora Liebes, my sister, Mr. Jo  
991 Weber, Mr. Harry Weber, Mr. Isador Weber, and Mr. Gustave Marcus. I can't say I saw all these papers. When I got mine I signed it I suppose. Don't remember the act of signing. Couldn't tell how many papers I signed.

Witness was then shown application to purchase No. 2344, in the name of Isaac Liebes, filed May 21, 1898, (referring to lands in count 32 of the indictment) and was asked if his signature appears thereon. He answered: "That looks like my signature; yes, sir." I know Mr. Tricon, the notary. He has signed many papers for me. I have been before him repeatedly, but this act itself I can't remember. That is my signature to the power of attorney. I have read this affidavit in the application (which Mr. Baker showed the witness). I don't know anything about this particular land. I supposed it was 640 acres that I would be entitled to under the rule. I didn't know of my own knowledge, that there was any occupation of the land. It is a fact that I did desire to purchase this for my own use and benefit, and that I made no contract with anybody else



to sell it. I don't know what I was going to do with the lands; I really couldn't tell what I was going to do with the lands. Except by this description, I don't know where it was, and by looking at the description, I can't tell where it is. I presume if I had a right to take it, I had a right to do what I liked with it after I got it, but I had no particular idea at the time, that I can remember, as to what I was going to do with it. I did not intend to speculate with it at that time by exchanging it for lieu land script. Nothing said about it at all at the time.

992 Witness then continued reading the affidavit, and further stated that he did not know of his own knowledge whether the land was suitable for cultivation. And, being asked what knowledge he had on the subject when he made this affidavit, he answered; I knew Mr. Benson for many years and I knew he was in that business. Of course, I couldn't tell where the land was. I never could find out if I tried, and nobody could, outside of a surveyor. So that of my own knowledge I had no knowledge except what he stated, that I was taking up lands that I had a right to take under the law, he being acting for me. I knew he was familiar with the business. He has quite a standing in San Francisco as a land lawyer and expert.

I had no knowledge as to the value of the land. I paid \$1.25 an acre for it. Land at \$1.25 an acre is cheap anywhere in California. I lived there for forty years. I know there are thousands and hundreds of thousands acres there, not worth anything but Benson wouldn't want to stick me on some land that was not good. Benson looked after the matter of these applications for me. I never paid him anything. He has never received any money. I represented the other applicants in so far as Mr. Benson was concerned.

I didn't pay Benson anything except a commission on some land that he sold that belonged to my wife. Couldn't tell the exact commission that I was to pay him. My wife sold 520 acres. I couldn't tell for how much an acre. I said that I had all these papers and the accounts of each in my possession in San Francisco at the time of the fire, and of course this transaction would show very clearly.

I had a book with each one of their accounts in, charged up  
993 as I laid it out for them; but unfortunately everything was burned up in the fire; so I can't tell you what it was per acre.

Can't tell you the exact amount I got from Benson. I remember the amount I gave my wife. I gave her about \$1500. That was for 520 acres, about. On the advice of Mr. Benson I decided all this property to the United States. He said if I decided it to the Government he would exchange it and get better land. When I made application to the Government to exchange lands, I didn't know where the other land was. It was an exchange by the Government in acreage. I believe the land that I applied for is in the State of Washington. I have never seen it. Mr. Benson told me it was there. There was no agreement at all with Benson at the time I purchased this land that it should be on speculation. To the best of my recollection, I made an agreement with him about the time I was going to Europe, about two years afterwards, and within a



few days, I believe, of my deeding the land to the Government, he said that as I was going away, he wanted to get some kind of an arrangement and he wrote off the agreement and I signed it. He was to sell the land on commission, either twenty-five or fifty per cent; I don't know which—something like that. I paid for the other applicants I have mentioned. Mr. Benson was aware of this fact.

Isador Weber was a nephew of mine. I got the lands for him under the same circumstances. I knew L. Meininger very well. He is dead. Died, I think, within the last six months.

994 The papers in the application of Isador Weber (referring to land in count 32 of the indictment) were here offered in evidence. It was admitted that the application bore his signature.

Cross-examination.

By Mr. CAMPBELL:

The State of California patented this land to me and to the Weber boys, so far as I know, and to my wife, and to my sister, and to Gustav Marcus; and after the patent I took a deed from them to the land and then I made a deed of relinquishment to the Government. I didn't know the exact method of getting a body of land of equal acreage, but I left that entirely to Mr. Benson. I have known him for twenty five years. Quite an important customer of ours, an old resident of San Francisco. Been engaged in the land business a long time. I trusted to Benson's knowledge of land matters, and I put up the money. Benson didn't put up anything.

I had no contract with Benson or anybody else to sell this land at the time. The only contract was the one I made later with Benson, and Benson was getting a certain percentage on the land *on the land* he sold; that is, a certain percentage on what he sold the selected land for. I understand there has been but one section sold. It is my understanding that save and except for the relinquishment to the Government of the United States, I have not disposed of this land in any shape or manner. I lived in San Francisco 40 years. Am actively connected with ten or eleven different corporations and firms there. I am president of the H. Liebes and Company; Vice President of the Northern Commercial Company, the Northern Navigation Company, the North American Commercial Company, the Alaska Exploration Company, and the Alaska Packers' Association.

995 I knew Mr. Meininger very well indeed. Did a large business with him. He was a notary. His office about four blocks from us. Did a very extensive business with him as a notary. I have been accustomed to go before him. After these applications were signed and the certificates of the notary were put on, I don't remember how the papers got to Benson. I don't remember whether I took them or not. I may and I may not have.

I put up all the money for my wife and sister and nephews and Mr. Marcus. I lent it to them, and I kept an account of it. It was their land. They would be entitled to any equity beyond my original outlay. All I was to get back was just what I put up.

I don't remember telling Benson, as far as I can recollect, about who was putting up the money for the others in this party. It is merely a presumption on my part that he knew. I haven't any recollection of telling him. When I signed the conveyance to the United States, it was my understanding that I was getting selected lands in lieu of it for nothing. I had no knowledge of the land business and left it entirely to Mr. Benson, what lands could be selected. Whenever the land was sold, he was to get a percentage on the sale. I don't think there was anything said about the price at which he could sell. The land was in my name and he couldn't make any sale without my knowledge. Except as to my own, I held it as trustee for the others, and to account to them when it was sold. They were all my relatives. It was a family matter.

996 Redirect examination.

By Mr. BAKER:

Gustave Marcus is a relative of the Weber's. I have no personal knowledge as to whether any of these people went before a notary. I had no specific contract with each one of these people for whom I had put up the money. It was a family matter and I mentioned the thing at home; and the boys living only a block or two from me, came to the house very often. They had no parents and I always looked out for their welfare, and I have advised them all along in different things; and when they heard us talking about it, as near as my recollection is, of course they would like it done the same. I consider it was a small outlay, and Benson thought so much of it that I agreed to put up the money for them.

I have appeared before Meininger hundreds of times. It is a fact that he has often taken my acknowledgment and an affidavit without my appearance.

Recross-examination.

By Mr. WORTHINGTON:

Unfortunately, that is a bad habit, a custom of notaries there generally.

I didn't know Mr. Hyde at all in this transaction; I never did. He never had anything to do with it at all.

(Mr. Meininger, referred to in connection with the testimony of the witnesses Flora Liebes, Joseph Weber, Mrs. Helena Liebes, Gustav Marcus, Harry Weber & Isaac Liebes, is the notary before whom the several applications to purchase school lands in the names of the said witness appear, on their face, to have executed and sworn to; also the application of Isador Weber.)

997

*Marcus Hart.*

Direct examination.

By Mr. BAKER:

Reside in San Francisco; merchant. Men's furnishing goods. Know Benson. Signed application for school lands. When I

signed it I didn't know where the lands were situated. I knew about the character of the land when I signed, I suppose, by reading the application. Outside of the application, I didn't know about their character. I have been informed the land was good for taking up. Paid \$1.25 an acre for it. I paid it myself.

The matter of my taking up an application was first mentioned to me by a man by the name of M. Friedlander. He told me — had been informed that it would be a good speculation to take up some of that land, and that it could be disposed of with profit. I asked him who would attend to that business and he told me Mr. Hyde. I told him I would inquire into it from Mr. Benson, he being a friend of mine. I asked Mr. Benson, and he told me it was; and I made the application for it. I told Benson to handle it for me, and I would give him a part of the profit. Don't remember whether I stated what part. He handled it for me and I sent for my application to Benson's office. The land has been disposed

998 of. Can't recall the exact amount I got or the exact amount that Benson got. I don't remember the percentage. I got more than \$1000 out of it. Mr. Benson received less than 50 per cent of the sale price as his percentage. I informed other people, friends of mine, to do likewise. One of them was my wife, my daughter, my son-in-law, and one or two of my brothers. My son-in-law was named Joseph Weinberger. My daughter was Rosalie Weinberger. She was not then married, and it may have been under the name of Rosalie Hart. I don't remember now. My nephew got some. His name is Ira Hart, and my brother-in-law Henry Reinstein. I had so much business with Benson that I left it with him to do the right thing by me. I had no particular contract as to how much I was to pay him. Don't recall how much he paid me. I put up some money and some paid their own money. Ira Hart, Julius Hart, Henry Hart, Leon Hart, Henry Reinstein, all put up their own money. I paid Adeline Hart, and Rosalie Hart had her own money.

I think I first signed one paper. When the sale was made, I thing I must have signed a deed. Can't recall what profit I made out of the applications of my relations, but I made some profit out of it. Ten years ago. Can't recall how much. I had an exact account until the fire came and destroyed it.

When I got these applications, I gave each one of them one to sign and go before a notary and swear to it. I think I got them from Benson's office. When I gave them to them, they signed them and had them acknowledged, and then I returned them to Benson's office.

Witness was then shown application to purchase No. 2262, in the name of Marcus Hart, filed August 20, 1897, and asked to 999 state whether his signature appears thereon. He answered: That is my signature. That is evidently the paper I signed.

I don't know where the land is located. Don't know that I ever knew. Only knew about the adverse occupancy by the information from Benson. He said I could locate it, it was all right. Don't recall what he said about the character of it, or as to whether it was suitable for cultivation. I went before a notary, James M. Ellis, and

swore to this paper. When I swore to these papers, I had the knowledge that I read in them. That is all I had and what I was told by Mr. Benson.

Can't recall whether that is the only paper I signed. My best recollection is that I didn't sign any other paper. That is my signature to abandonment of location. I don't remember anything about signing it, but I see my signature there and recognize it. That is my signature to affidavit dated July 9, 1897. I have no memory whatever of signing that paper.

The papers in application No. 2262, in the name of Marcus Hart (land in bill of particulars) were then offered in evidence.

In my first interview with Benson, there was nothing said in regard to selling the scrip, and how much we could get for it. I had too much business with Benson to ask him about it. I knew he would do what would be right by me.

I made a statement to Mr. Neuhausen. I have read part of it since I came here; perhaps all of it. I didn't state to Mr. Neuhausen that the facts therein stated were true. I am sure about it. 1000 I told Mr. Neuhausen the truth about it, and I think the statement is not as I made it. That is my signature to the statement dated February 11, 1907. I signed it. I don't know whether that is the statement I read yesterday. Don't remember whether I read it over before I signed it. Upon its being handed to the witness, he says it does not look like the one I saw yesterday. There are some corrections to be made in this statement, which is not correct. I did make that statement to Mr. Neuhausen and signed it. And I say it is wrong. I told Mr. Neuhausen yesterday that it was wrong. When I read it over yesterday, I didn't say it was correct. I said it was wrong.

I may have had a conversation with Mr. Benson before I signed any papers in regard to the sale of the scrip. I don't recall it. The conversation must have been for me to get as many of my friends to take up lands as I could, and he would handle it for us; that is, he would sell it for us.

I would put the profits in my pocket—not all of them; I had to divide with the people who signed. Benson got a share of the profit, but I don't recall how much.

I don't recall how much I gave to Ira Hart, but I paid him. Gave him more than \$125. Julius Hart got quite considerable money—more than \$250. He got a good many hundred dollars. I paid him liberally. He was my brother, and I was not stingy about it. I took the lion's share. I don't recall how much money I put up. I put up more than the first payment. I am sure.

At that time Mr. Benson owed me considerable money, and instead of paying me cash, he put up money for me. I don't recall the circumstances. He owed me money, and he put it up for me. 1001 charged it to my account, or I credited his account.

I know Mrs. Fleischauer. I paid her considerable money. Don't know whether for school lands. I didn't pay her for school lands. I honored Mr. Benson's checks or orders on me for Miss Fleischauer, and for others too, for a good many hundred dollars. I have no knowledge of Benson owing Miss Fleischauer money. I

think the money I paid Mrs. Fleischauer for Benson would run up into thousands, covering a period of twelve or fifteen years. She received money whenever she brought an order from Benson. I never had any school land transaction with her whatever. When I paid this money to her, I got it back by check from Mr. Benson.

I didn't put up money for all my relatives. I said I put up my daughter's money, but I remember she took it out of the savings bank, and put it up herself. She recalled that fact to me. I did not put up money for Rosalie Hart, but I did for Adeline Hart, my wife.

Cross-examination.

By Mr. CAMPBELL:

The people the District Attorney have asked me about, my brother, my nephews and wife, etc., were all real persons. They were not fictitious persons.

Mr. Benson didn't own this land or have anything to do with it, except as I have stated.

I know Joseph Dixon. He made an application for school lands, and I put up the money for him. He was to get some benefit; he was ultimately to get some profit out of it. That land has not been sold yet. If I do, I will give him part of the profit.

1002 I know Margaret Andrews. Have known her about ten years. Before the fire in San Francisco she lived in the Waldeck Sanitarium. She was a nurse. She was nurse for my two daughters. She is a single lady, about thirty or thirty five years old, about six feet tall or more. I know of my own knowledge that she made an application for school lands. I put up the money for her. I don't think that land has been disposed of. The only connection Benson had with that was his agreement for the commission. I didn't see the lady who was here as Mrs. Margaret Andrews; but this lady, Miss Margaret Andrews, is a single lady and a nurse.

Redirect examination.

By Mr. BAKER:

I secured Margaret Andrews' application. The papers were prepared in my office. I got them from Benson; got the description of the land from Benson. The papers were filled out and handed to Benson, and I know of my own knowledge that they were sworn to. I was present before the notary. Don't remember which notary, either Greenblatt or Ellis. They were my attorneys. Don't remember whether they were sworn to in my office, but any paper that went through my hands was properly sworn to. She didn't put up any money. She knew all my family was signing applications, and she was in my employ there and asked if she could not sign one and make something out of it. I told her she had a right to. The understanding was that she would get her portion of the profits that were realized. She read the application over.

I don't know where the land was situated, nor its character.  
1003 Couldn't tell who filled in the paper that Margaret Andrews signed. Either she filled it out, or it was filled out at

the suggestion of some surveyor who knew about it, or Mr. Benson, or one of his surveyors. He knew the character and the location of the land, which we did not know, and we got information from Benson. Benson was not present when this paper was filled out. It was filled up in my office. No doubt I got the data to fill it up from Mr. Benson. I have no doubt she went before a notary and acknowledged it, because I would not let any paper go out of my hands unless it was properly acknowledged. I took Margaret Andrews' paper to Benson.

Margaret Andrews is living now. She is in the office of Dr. M. Herzstein.

Greenblatt and Ellis were the notaries on these applications. Nobody else that I remember. I took mine before the notary. Don't recall that I went with Miss Andrews to a notary. She signed it. It was taken before a notary by her, or maybe the notary called at my office. I don't recall.

I am acquainted with James Mason. He may have been the notary that did work for me. He has been doing work for me. I don't think Tricon ever acknowledged anything for me.

Had some business with Meininger. Don't know whether he acknowledged any school land papers or not.

James L. King never took any acknowledgments from me. I knew him well.

Don't recollect whether Mason ever took any acknowledgments of school papers.

I had to take Margaret Andrews to the notary, or have the notary there. I must have been present. I wouldn't swear that I was, but I must have been. To the best of my knowledge and belief, I must have been present. I can't state positively. It is ten years ago.

Witness was then shown application to purchase No. 2225, in the name of Margaret Andrews, and was asked to state whether or not her signature appears thereon. He answered; I cannot tell her signature, but I think it is. That is Margaret Andrews. I have seen her write. I am quite sure it is her handwriting. I think that is her signature also to the power of attorney. The notary's jurat on the application and the power of attorney appear to be signed by James Mason, Notary Public. It is most likely I was present when she signed and acknowledged the papers, because I took her to the notary. I took them all. I don't remember it definitely. I remember her signing the application before such notary as I directed her to go to. I must have gone with her, or else I had him come to my place. I don't remember whether I took her there, or directed her where to go. She went where I directed her to go with me or without me. I don't recollect; but she went.

The Margaret Andrews application embraces land in count 1 of the indictment.

*Joseph Weinberger.*

Direct examination.

By Mr. BAKER:

Reside in San Francisco. In 1897 was a clerk for Marcus 1005 Hart. Not working for him now.

Either Mr. Hart or Mr. Friedlander advised me to apply for some school lands. Absolutely nothing was said about forming a pool to purchase school lands. Either Friedlander or Hart—and I believe it was Friedlander—brought the application to me, which I signed and made a deposit of \$25 on it, I believe. Within a year I paid \$200 more, in that neighborhood. After that I paid more money—it was more than the first payment of 25 cents an acre. Don't know just when it was. Don't think it was much later than after I paid the \$200. I think I paid about \$300 more.

Asked whether he had made a statement to a Government official—Horace Tillard Jones—he answered: I don't know the name.

I haven't read any statement since I have been here. Mr. Neuhansen began to read one to me one day.

I don't know where the lands that I purchased were situated. It was agricultural land, I believe. Don't know as to any adverse possession. I bought them more for speculation than for any other purpose. I was told at the time I applied for them that they would prove either valuable to me or to sell; valuable to me, or as a speculation. I scarcely expected to live on them. Don't know what part of California they were in. I believe I bought 640 acres.

I think they were suitable for cultivation. I made no affidavit in regard to the lands when I made my application; not to my recollection.

The papers were brought to me either by Mr. Hart or Mr. Friedlander, I am not sure which. I signed them and put up \$25. That

is all I know about it until I made the next payment. There 1006 wasn't any notary to my memory, when I first signed the

paper. The next payment I made to either Mr. Hart or Mr. Friedlander. I went before a notary in regard to these papers, after the original papers were taken out. It was either Mr. Ellis or Mr. Greenblatt. Inclined to believe it was Greenblatt. This was after the papers were originally taken up. Don't recall what paper I then signed. I sold my lands, and believe I got the money from Mr. Friedlander for them. Both he and Mr. Hart were advisers of mine at the time. I got back \$800 or \$850 when the land was sold. I put up somewhere in the neighborhood of \$225 in all. I think Mr. Hart or Mr. Friedlander paid me this \$800 or \$850. Could not tell whether it was check or money. It was not much over a year (presumably after he made out his application) when I made the assignment and I went before the notary, either Greenblatt or Ellis. Nobody went with me before the notary. I got the papers from Hart. I am sure.



I know J. H. Lavenson. He had nothing to do with the assignment I made, that I know of.

I know Mr. Benson. He had nothing to do with it, to my memory.

Witness was then shown application to purchase No. 2221, in the name of Joseph Weinberger (referring to lands in count 1 of the indictment), and was asked if his signature appeared thereon. He answered: I believe that is my signature.

At that time, I think I signed other papers. That is my signature to the power of attorney. I believe that is my signature to the assignment bearing date February 8, 1899. Mr. Lavenson did not, to my knowledge, witness my signature. I was in the notary's office when I signed the assignment, apparently Greenblatt's; his name is there. Either Greenblatt's or Ellis' I know Mr. Greenblatt.

I see him in court. That is him (pointing to Greenblatt). (Greenblatt was the notary in the assignment). I met Mr. Mason, the notary, in the corridor here last week. I did not appear before him, to my recollection, to acknowledge any papers. During the last few days (since Greenblatt was on the stand) I have not talked with anybody about the case. I have not talked with Benson, nor Miss Glover, nor Hart about the case.

Cross-examination.

By Mr. CAMPBELL:

I have lived in San Francisco 22 years. I was clerk both for Mr. Hart and the Wertheimer Company—in the early part of 1897. Had been in Hart's employ about a year before I signed these papers. I knew Mr. Friedlander. It was either he or Hart that first spoke to me about these papers. I signed the papers that were shown me, and was perfectly willing to go before a notary public, if necessary, and I am now scarcely able to state whether or not I did, with respect to any of these papers. I can positively say I went before a notary once. That was Greenblatt, as I saw yesterday by the acknowledgment.

"Q. You knew you were taking up school land? A. I remember that the land I had in mind, I believe, was agricultural land.

"Q. I mean State land. You knew you were taking up State land? A. State land; yes, sir.

1008 "Q. And you were informed that the land which you did file on was such land as could be taken up from the State? A. Yes, sir.

"Q. And it was taken up by you? A. Yes, sir.

"Q. And it was patented by the State? A. Yes, sir.

"Q. And you did, after it was patented, through certificate of purchase issued to one or the other, sell it? A. Yes.

"Q. And you made a profit of \$800 on it? A. Thereabouts.

"Q. Did Mr. Benson have any interest in that land one way or the other save and except a commission for the sale of it? Q. Not to my knowledge.

"A. You would know it if he had, would you not? A. I presume so."



Redirect examination.

By Mr. BAKER:

I believe it was Mr. Hart who paid me the \$800.

ROSALIE WEINBERGER, witness for the defendants, called out of order by agreement.

Direct examination.

By Mr. CAMPBELL:

Before my marriage I was Rosalie Hart. I am a daughter of Mr. Hart who has just left the stand and am the wife of Joseph Weinberger.

In 1898 or 1899, I was cashier and bookkeeper in my father's store. In the year 1897, I knew a lady by the name of Margaret Andrews in San Francisco. She was a trained nurse. She took care of me when I was ill and took care of my sister. I have seen her write and corresponded with her. I believe I know her handwriting.

The signature to application 2225 looks very much like her handwriting. I believe it is her signature to the power of attorney.

I believe Margaret Andrews is now close on to forty years old. Don't know positively. Don't remember when I last saw her—seems to me not since the fire, I may have. Have not spoken to her since the fire.

She is very tall, almost six feet, very heavy; she was a blonde.

*Henry Randolph (Colored).*

Direct examination.

By Mr. BAKER:

I reside in San Francisco. In 1898 I was and still am in the hat room of the Palace Hotel.

J. V. Scott asked me if I didn't want to take up some land, and I was directed by him to go to Hyde's office if I wanted to take up land, and I went there and signed an application. I saw Mr. Hyde when I went there. I made application for the land. He produced the papers and I signed them, going before a notary public for that purpose. I only have a recollection of signing one. Only remember going before the notary once. I was paid after giving him the power of attorney to dispose of the land. That was quite a while after making the application. I was paid all the way from \$4 or 1010 \$5, as near as I can recollect, to about two, two and a half, and three at different times. Couldn't say how much I got in all; about \$20 or \$25. Each time I went to the office, especially on receiving the money, I saw Mr. Hyde. He paid me the money.

Witness was then shown application to purchase No. 6613 in the name of Henry Randolph, filed July 18, 1898, (referring to lands in count 27 of the indictment) and was asked to state whether his

signature appears thereon. He answered: Yes; that is my signature. That is my signature on the power of attorney also.

My recollection very faint on the point of whether I paid Mr. Hyde any money. Don't know whether I paid Mr. Hyde or the notary public. I was told by Scott that I would have to pay on the application. Could not say positively. Scott said the application cost from \$6 to \$8 or \$10 that I would have to pay down. That is when he first spoke to me about it.

#### Cross-examination.

By MR. WORTHINGTON:

I kept a memorandum about these money transactions with Mr. Hyde. It was lost in the fire. I haven't any recollection at all about the amounts and dates, on the memorandum; nor whether I paid something originally or not. Mr. Scott told me I would have to take up the land myself, and I remember a good while after I signed the original application Mr. Hyde notified me that the land had been sold, and then I went and signed further papers and went before a notary. Recollect going before the notary once, and possibly I went twice. It may have been twice. Can't tell the date. I went into Mr. Hyde's office. For all I can tell, that is the right date named in the application, on July 16, 1898. I haven't any recollection but that the date in the power of attorney, July 16, 1898, is the right date for that. Possibly I signed both of these papers when I went to Mr. Hyde's office first. I can't say that I did not. Scott came and told me the land had been sold and that I should go to Hyde's office and he would settle with me for the profit on the transaction. I went and he did settle, and I was satisfied; well, to an extent I was satisfied.

#### Redirect examination.

By MR. BAKER:

After I signed the papers, I didn't go back there again and again and try to get the money. I was notified to come and receive it. I thought it would be a larger transaction, is what I meant by being satisfied to a certain extent, on my making the application. I read the affidavit I signed. I have forgotten where the land was situated. I read in the affidavit the description of the land. Of course, I couldn't tell where it was at that time. I knew, but I never paid any more attention to it after making the application. I was not acquainted with the character of the land, nor whether anybody was holding it adversely. Made no inquiries about its being suitable for cultivation.

Scott told me to take it up for my own benefit. I understood that it was to be for a homestead—that I was to have it as a homestead. Nothing was said at that time about making some money on it. When I understood it was a homestead I didn't know where it was. I knew at the time I was reading it, of course. I don't know now after reading it. I know where Ventura County is; that is all. Simply had the idea I was taking up

that section of land. I didn't know it was a forest reservation. My intention was to live on it at some time if I so decided, but I had not decided at that time to more than acquire the land. Mr. Hyde didn't tell me that this land was in a forest reserve, and that nobody could live within a forest reserve.

When I went there and signed this paper, I thought I was getting a place for a home, I never attempted to find where the land was nor about the character of it. I thought there was plenty of time for that. I dare say that I knew at that time how much I was taking up. Can't say whether it was 640 acres. I must have known then but I don't recollect.

Afterwards I agreed to sell, and it was not stated what the terms would be, no more than that they could be disposed of for me, and I gave a power of attorney for doing so. Could not say exactly what I received. It may have been more than \$20. I got it in small amounts. I expected it to be more than it was, but that was all. Never attempted to go to look at the land to see whether it was suitable to live on. Couldn't tell how many miles it was from San Francisco, or whether it was on the top of a mountain or down in the valley, or desert land, or timber lands, or whether it was in a forest reserve or not.

Recross-examination.

By Mr. WORTHINGTON:

Either Mr. Hyde or somebody in his office told me that the land was subject to entry and that I had the right to take it up. I didn't tell Mr. Hyde what I wanted to do with it. I don't recollect  
1013 telling him. Simply told him I wanted to take it up, and he told me as to the affidavit that was all right, or somebody in his office told me that, and I swore to it, because I understood from Mr. Hyde or some one in his office that the statements in it were true.

By Mr. BAKER:

Mr. Hyde told me I had a right to make application for the land. Didn't tell me what kind of land it was. He might at the time have told me where it was situated. Have no recollection; it is too far back. Have no recollection on the point of its being timbered land or suitable for cultivation.

*W. S. Kingsbury.*

Direct examination.

By Mr. BAKER:

Reside in Sacramento, California. State Surveyor General. Have been so since January, 1907. I succeeded Victor H. Wood. He was State Surveyor General for four years. Prior to that, M. J. Wright was State Surveyor General. He occupied the office eight years.

The School lands are for sale by the Register of the State Land Office, and as Surveyor General I am ex-officio Register of the State Land Office and have charge of the sale of State School lands.

A party desiring to purchase school lands files an application or presents an application to my office, and if the land is open to location the application is filed. The next step is the approval of the application. This is approved if the requirements of the office have been complied with. An application can not be approved 1014 before ninety days, but must be approved at the expiration of six months from the date of the filing.

For a sixteenth or a thirty-sixth section, there is a filing fee of \$5 and a deposit fee of \$20 which must accompany each application. If it is lien land, United States lands taken in lieu of school lands, there is a filing fee of \$5 required. After filing the confirmation of the application no further payments are required until it is approved.

I was familiar with the practice in 1897, 1898, and 1899. There has been no change. I was not in office then.

By approval of an application, I mean in getting the Surveyor General's approval of the application, if it is requested at the expiration of 90 days. If they do not request the approval at the expiration of 90 days, it is held until the expiration of six months, when the Political Code requires the approval. The surveyor General must approve the application at the expiration of six months. But if the laws have not been complied with, the application is canceled. There is no further payment to be made between the time of filing and the time of approval.

After approval, if the land is not timbered land, the applicant has the privilege of paying 20 per cent of the purchase price or the entire amount as he may elect. If the land is timbered land he must pay the full purchase price within 50 days from the date of the approval.

The State issues a certificate of purchase when he pays the twenty per cent, and issues a patent whenever the balance is paid, providing one year has elapsed since the date of the approval.

1015 I am familiar with the records of my office. I have brought certain of my records with me. I have a record here of the application of O. T. Zinns. In response to your question, I have looked at the jacket in the O. T. Zinns case and find it is made up by one of the employees at the time of the preparation of the patent—at the time the patent is drawn up. All the papers and application 2226—O. T. Zinns, including the jacket, introduced in evidence.

(It was then agreed between counsel that this witness should prepare a list of the records of application to purchase school lands which he had brought from his office in connection with this case, in order to facilitate proving and introducing the same in evidence at a later time in the trial.)

## Cross-examination.

By Mr. CAMPBELL:

As a general thing, it was the practice of the office to send the deed or certificate of purchase to the lawyer who represented the client—unless we had instructions to send it directly to the client.

I knew that Mr. Hyde and Mr. Benson were land lawyers in San Francisco practicing in my office. There is a filing fee of \$5, and a deposit of \$20. If the application "dies" through failure to make the payment, we keep the \$20.00 or if they take the land up that \$20 is credited on the payment to the county treasurer. My office doesn't take any money in payment of lands, except the original deposit of \$25. What you would call a certificate to the county treasurer when the 20 per cent has been paid is the approval of

the application, and this goes to the applicant. He presents  
1016 that to the county treasurer and gets credit on his payment for what he has paid to us. After he makes the payment to

the county treasurer, the county treasurer notifies us. If the applicant returns the approval to our office with the notice of payment endorsed on the back we issue what they call a certificate of purchase. Under the laws of the State of California these are negotiable and salable to any person, and that certificate of purchase may grow into a patent within one year after the approval of the application.

For the sixteenth and thirty-sixth sections the patent is not to be issued until one year of the approval of the original application to purchase the property.

"Q. It is also a practice of your office to examine the records, is it not, and determine whether or may there is any conflict in the applications? Suppose two people file on the same eight acres of land out of six hundred and forty—who determines that? A. If there is a filing, an original filing, and a party desires to file as a second, subject to the rights of the first, we will accept his application. If he does not want to file it as a second, we will reject it. If he wants to contest the application, he can file a contest with that application, and we will refer it to the superior court."

Then it goes to the court to be tried out between the two persons as to who has the right to purchase the land. The land has to be surveyed before we can receive an application, and if the land has been surveyed, and any one is residing on it, and does not file an application in the State Land Office within sixty days after the approval of the survey, they lose it; they have no  
1017 further rights as a preferred purchaser by living on the land after it is surveyed. He has ninety days, I believe—I don't know whether it is sixty or ninety—after the survey is made and the plat is filed in the General Land Office, in which to be a preferred purchaser. But if the land has been surveyed for a year, he does not gain any rights by living on the land after it is surveyed, if it has been surveyed a year.

The office requires an affidavit of two witnesses as to whether that land is agricultural or timbered land, and that affidavit is used,

if they say it is timbered land, we require a cash payment. If they say it is not timbered land, we do not. If the land is suitable for cultivation without irrigation, then they are allowed 320 acres; but if it is merely agricultural land they can take 640 acres.

The Governor and the Secretary of State and the Register of the State Land Office sign the patent. Before the Governor signs the patent, I certify that the laws have been complied with and that the money has been paid, etc., and that the party is entitled to a patent; and I do that from the evidence taken before my office—the evidence of the witnesses, and if there is no proof by affidavit in my office of the character and condition of the land, that has to be furnished within six months from the date of filing. If it is not furnished the application is canceled and then rejected. It has never happened that the affidavit has been furnished and has not been satisfactory to the office. Don't know what I should do if such a case should occur.

By Mr. WORTHINGTON:

My office is a State Land Office for the whole State, so that all the applications for school lands for the whole State have to come to my office. It is a very common occurrence to have the applications presented and the cases attended to by attorneys who are known as land lawyers. They have land lawyers all over the State, in large cities. Land lawyers or agents, as you might call them, file fully eighty per cent, if not more, of all the cases filed. It is the universal custom, when an application is filed through an attorney, to have a power of attorney accompany the application. It is required now so that the attorney who is named in the power of attorney can attend to the case for the applicant. I don't know whether the other surveyor generals required it or not. I have required it only eight months or so.

I am acquainted with the general character of the records of my office along 1897 and 1898. I couldn't say positively whether it was practically the universal rule in those days that a power of attorney accompany the application where there was a land attorney in the case; but in looking over some of the applications I have found that powers of attorney were filed with those applications, but I don't know in what proportion. I have not made an examination and not having been there at that time can't tell whether the same rules obtained then as now or as fully as it does now.

As a general rule, the application and the power of attorney and the check would all come together, and, as a general thing, they would come from the attorney in the case, and the cash payments were practically always made by the check of the attorney. When the time came to issue a deed or a certificate of title, where there was an application and a power of attorney the certificate of purchase would be made in the name of the applicant, and the certificate of purchase would be issued immediately after the first payment was made to the county treasurer—the twenty per cent—and the patent would issue when the full payment had been

made, provided everything was all right; and in cases where there was a power of attorney the patent would issue to the applicant, and, as a general thing, would be sent to the attorney. All notices and papers whether for the applicant or for his attorney, would go through the attorney, in cases where there was an attorney.

The \$5 would be deposited with the State Treasurer and go into the school land fund. The \$20 we would deposit with the treasurer and issue a receipt. That receipt went to the applicant, and if the applicant made his payment within the time required by law, that would be accepted by the county treasurer as \$20 cash for the State school land fund; and when the full payments were made, that would go to the county treasurer for the State school fund. No patents were issued until the State got its \$1.25 an acre and it had gone into the school fund, and the price was the same for all school land. It was a dollar and a quarter an acre, whether it was good, bad, or indifferent; agricultural land, timber land, desert land, or what not.

Re-direct examination.

By Mr. BAKER:

In the case of an abandonment of location, the fee would go to the State; the \$20 would be forfeited, and that would go to the State; if they abandoned it and took up some other land in 1020 the place of it, they would have to pay an additional fee, an additional \$20.

I would have no way of knowing whether the land was held adversely until an application was presented for the land. Take a case where land is surveyed, and a month from now somebody files an application. When this application is presented, he would have to state in it that he was an actual settler on the land, or that there was no adverse occupation to his. If the applicant was an actual occupant of the land, a certificate would state that. If he was not, the application would state that nobody else was on it. We rely entirely on the affidavits accompanying the applications, and all of our actions were based on these affidavits and the papers that we had before us. And that was true as to the statements required to issue the patents. We did not go any farther than the application or the affidavits.

We kept a list of the attorneys who were connected with the various cases. We kept these in a book, what is called a diary and that book is open to the inspection of everybody. When a case came into the office, we had a filing book. We have not put the name of the attorney in that since I have been in the office. I have seen the names of the attorneys on some of the filing books. I have seen the names of Hyde and of Benson on the filing book. Do not remember what years. Have not seen them frequently. Their names appeared frequently on the diary. These books I have sent for, on the subpoena of the Court.

Recross-examination.

By MR. CAMPBELL:

1021 We have in the office a plat of all the lands which shows when the lands were surveyed, and when an application is made, we consult the plat to find out whether or not they come within the sixty day limit. If an application is presented to the office and the plat is on file there, we can tell; but if there is no plat, and the applicant says the land has been surveyed, we will consult with the local land office and ask them if there is such a plat on file with them.

We take the affidavit of the two witnesses, accompanying the application as to the character of the land, whether it is timbered or not. That is the object of the affidavit. Before we file an application for a sixteenth or thirty-sixth section in California, we require a certificate from the Register of the local land office, asking if there is any adverse claim to that of the State of California.

By MR. WORTHINGTON:

We keep in the office a record of the sixteenth and thirty-sixth sections, in all the townships, and when an application is filed as to a particular section, it is noted on that plat; so that anybody may go to my office, and, by looking at these plats, see as to every school section in the State what lands have been covered by applications filed and what is open. As a general thing, anybody can do this.

I have not been informed that it was the interpretation of the act that there was no adverse holding within the meaning of the law unless there was an application filed.

By MR. BAKER:

1022 If land were surveyed to day and the district attorney was in possession of the land, and next week Mr. Neuhausen filed an application, we would not accept the application because the plat had not been filed the required time. That has to be filed. I don't remember whether it is sixty or ninety days. After the expiration of that 60 or 90 days, whichever it is, the adverse holder has no right to file his application. If an application is filed in our office or brought there to be filed and we discover that somebody else has filed a claim to it, we do not accept the application, unless the applicant wants to file it as a second, subject to the rights of the prior applicant. If the applicant wanted to contest the right of the prior applicant he would have to file a contest of the application and demand that it be referred to a court. We would accept the second application as a contest and refer it to the court, and the court would determine who had a right to the land. The applications then do not go out of our possession.

Recalled for further direct examination.

By MR. BAKER:

I have additional papers here from California. They were filed in 1902. I have the daily diaries here.



Cross-examination.

By Mr. WORTHINGTON:

Have been surveyor general since January 7, 1907. The entries in these books are not in my handwriting, and I do not know in whose handwriting they are. All I know about them is that they came from my office. I don't know of any statute or regulation which requires such books to be kept. There is none.

By Mr. BAKER:

I don't know how many of these books I had in my office and covering what years. They probably extend back from 1908  
1023 several years, eight, ten, or twelve years; I don't know how many. When I came into the office I found these books there, and I continued the use of them since I have been here.

Further cross-examination.

By Mr. WORTHINGTON:

I have no knowledge as to how these books were kept in the years prior to my going into the office. I simply found them there when I went. Have no knowledge as to how they were kept or how the entries were made, whether they were made daily or weekly or monthly or when. I really don't know whether during the time that they were kept the public was allowed access to these books. I was not in office at that time. Since I have been surveyor general and these books have been in my custody, I have considered them public. They are kept during my office hours at the expense of the State; that is, those that I kept.

By Mr. BAKER:

If a person should come into the office and ask me in regard to case 2020, as to what attorney filed it, in order to find that out I would look in the papers first to see if there was an attorney there. If there was none, I would refer to the book, the journal, this book here. If you should go through all these papers in my office, and ask me to tell you who represented the different applicants before the Land Office, I would pursue the same method. After a patent is granted and I want to send the patent to the person's attorney, or  
1024 to the person who made the first payment, I would find out to whom to send the filing receipt by referring to these journals. These books are in constant use in my office.

"Q. Let me see if I understand you. Suppose we take case 2028, and a patent is granted in that case—to whom would you send the patent? A. Why, to whoever requested it. If any individual came in and asked that it be sent to a certain individual, we would send it to them."

If nobody came in, it would be sent to the record attorney. If there was no attorney and no letter, we would obtain the information from these books.

As I testified before, I don't know who kept these records and who made the entries. If there was no attorney and no letters showing

who the attorney was, for my own satisfaction—not to give it as authority—I would refer to these books. If I wanted to send out a patent in this case, 3903, I would refer to the book to determine to whom to send the patent, unless there were other requests. On the books where these cases are docketed, there is no entry showing the name of the person to whom the filing receipt was sent. In my office, I find that name on these books. I rely on them in such matters. I have been connected with the office since January 1907, a little over a year. I was not there in any other capacity before that. There is no one in my office who was there in 1902. Mr. Rickhard went out of office, I believe, in 1903.

By Mr. WORTHINGTON:

1025 In a great majority of those cases we have gone over, on those other records that we had as evidence, there was an attorney filing these applications, and there would be a power of attorney to him filed with the application. I don't know what those papers from 1897 to 1901 would show. I don't know whether there is any power of attorney in them or not. If I wanted to know who was the attorney in the case, I would look in the application to see if there was a power of attorney in the application; and if there was no power of attorney, I would see if there was any letter with the papers from the attorney, and it is only where I would find no papers and no letter that I would turn to this memorandum or book. Have no idea of the proportion of the cases between 1897 and 1902, where reference to the papers would show who were the attorneys, and I would not have to refer to any memorandum, because I have not examined those papers. As a matter of fact, I should say that I have to refer to those books to find out who was the attorney in the case where the filing was made from 1897 to 1902.

So far as I can tell, whenever I had looked, I always found power of attorney or a letter from the attorney. As I say, I don't know that I have ever looked up that matter to see. The people who come into the office are waited upon by my clerks, and they would be the ones to look for that information.

By Mr. BAKER:

These books here are used by the clerks in my office now.

By Mr. WORTHINGTON:

1026 If a patent issues now, and I find no power of attorney in the case and no letter about an attorney, I couldn't say positively whether I would send that patent to an attorney just from the memorandum that I would find in this book. Can't say that that has ever been done in my time. I have instructed the man that made out the patent, if there is no other information, to send it to the attorney—that is, up till lately, when I first came in; but since then I have required a power of attorney. After I had more experience, I required a power of attorney to be filed and I will not act on these books at all. In fact, I don't keep them for that purpose since I have made a new rule governing the matter.

When an application was filed, I sent the filing receipt to the attorney; that is, if a clerk filed it, I would send to his or her principal, and with that filing receipt I would send a notice that if they desired any further papers in connection with the case they must file a power of attorney.

By Mr. BAKER:

I found books there covering a period of 12 or 15 years, similar to the books I have here.

*Walter K. Slack.*

Recalled for direct examination.

By Mr. BAKER:

I left San Francisco somewhere about the 10th of December, to go to Tucson, Arizona, to see Schneider, and got back on the 15th of December, 1902.

"Q. What conversations did you have at that time with Schneider?"

1027 To this question, counsel renewed the objection to confessions or admissions by the defendant Schneider, upon the grounds hereinbefore stated to similar testimony by the witness William J. Burns, and there was the same ruling and the same exception as in that case.

Whether or not I told him that Mr. Hyde told me, I don't remember; but I told him that I understood that he had written to the Department about Hyde. He said he had. I asked him what he had said. He said he had written about the business and had stated that certain of the names used were fictitious. I asked him what those names were, and if I remember right, the name of Jennie Blair was mentioned, and Elizabeth Dimond. I told him that I had left Hyde, and that I wished that he would not get me mixed up in it any more that he could help. He said he had an attorney named Zabriskie, who had also written the Department. He took me down to where Zabriskie's office was, if I remember right, but Zabriskie was not there; and we talked over matters generally, and as I said before, I asked him not to mix me up in it, any more than he could help. He also said that if he had the money he would leave the country; and I told him that would be the worst thing he could do—that was practically the conversation.

I don't remember having said anything about a Masonic oath. I don't remember whether I requested Schneider—I don't think I did—not to say anything more about the matter so far as Mr. Hyde was concerned. I did testify that I went down there at the request of Mr. Hyde. I told him—I didn't tell him—I went down because,

as I said before, Mr. Hyde accused me of writing  
1028 those letters. I believe I did, however, say to him not to say anything more than he had to say—let me see—yes, sir; I did say that. I did say that there would be a special agent to see him, and I asked him not to talk to the special agent. What

I meant by requesting him not to "get me mixed up in it any more that he could help," was that I had been working for Mr. Hyde, and if there was any trouble coming, I didn't want to be mixed up in it, if I could help myself. Mr. Hyde paid my expenses down there.

I didn't see Mr. Schneider after that, until about a year ago when I was him here.

"Q. I will ask you what instructions you had from Mr. Hyde in regard to Mr. Schneider's not talking? A. Mr. Hyde requested me to say to Mr. Schneider not to say anything to the special agent when he came to see him."

Witness was then asked to take up the applications to purchase referred to in the testimony of the witness Don Alexander, and to examine same, and the papers connected with them, and state the handwriting as far as there is writing with pen and ink on the papers. He testified with respect thereto as follows:

No. 8664, D. O. Fulton. Body of application in handwriting of Mr. Schneider. Deed in handwriting of Mrs. Curtis, except the date, which is Mr. Hyde's handwriting. The date in the jurat is also Mr. Hyde's handwriting.

No. 8551, F. C. Wilder. Don't know the handwriting in the body of the application. The body of the deed and the dates are in the handwriting of Mr. Hyde, including the dates in the jurat.

1029 No. —, Andrew Anderson. Body of the application in the handwriting of Schneider.

No. 8636, Putnam Walsh. Body of application wholly in handwriting of Schneider—the description of the land, and possibly the first date. Body of the deed in the handwriting of Mrs. Curtis; the dates in the handwriting of Hyde, including the date in the jurat.

No. 8550, B. D. Mills. Body of the deed in the handwriting of Mr. Hyde, and the dates in both the deed and the jurat.

No. 8629, B. O. Stanley. Body of the deed and the dates, including the jurat, are in the handwriting of Mr. Hyde.

No. 8573, Ira C. Traver. Body of the application in the handwriting of Schneider, including one of the dates. Body of the deed and the dates, including the jurat, are the handwriting of Herbert Clarke.

No. 8809, John P. Brown. The description of the land in the body of the application is in the handwriting of Mrs. Curtis. The body of the deed is Herbert Clarke's handwriting; also the date.

No. 8570, W. A. Stafford. Body of the application in Schneider's handwriting, including the first date. Body of the deed and the dates, including the jurat, in the handwriting of Herbert Clarke.

No. 8812, Lydia Armstrong. Body of the application in the handwriting of Miss Laura E. Farwell (a clerk of Mr. Hyde's, who is dead). Body of the deed in the handwriting of Herbert Clarke, including the dates in both deed and jurat.

1030 No. 8671, C. R. Brumche. Body of the application and first date in the handwriting of Schneider. Body of the deed in Herbert Clarke's handwriting; the dates also.

No. 8665, S. D. Sandridge. Body of the application in the handwriting of Schneider, including the first date. Body of the deed and the dates, including the jurat, are in the handwriting of Mr. Hyde.

No. 8673, E. E. Page. Body of application in Schneider's handwriting, including the first date. Body of the deed is in the handwriting of Herbert Clarke, including the dates.

No. 8588, Winnie Edwards. Body of application partly in the handwriting of Schneider, including the dates.

No. 8810, B. P. Beede. Body of application in the handwriting of Schneider. Body of deed and date are in Herbert Clarke's handwriting.

No. 8663, B. F. Parker. Body of application in Schneider's handwriting. Don't know as to dates. Body of deed in Hyde's handwriting. Dates in both deed and jurat in Hyde's handwriting.

No. 8569, Marcus V. James. Body of application in Schneider's handwriting, including the dates. Deed in handwriting of Herbert Clarke, including the dates in both deed and jurat.

No. 8568, P. L. Johansen. Body of application in Schneider's handwriting, including the first date. Body of deed in Herbert Clarke's handwriting, also dates in both deed and jurat.

No. 8674, E. C. Douglas. Body of application in Schneider's handwriting, including the first date. Body of deed in Herbert Clarke's handwriting, including the dates in both deed and jurat.

(It was here understood that in speaking about the body of a paper, it was not intended to apply to the signature of the party to the paper, but only to what is written in the instrument, outside of the signature.)

No. 8574, A. H. Bean. Body of the application in Schneider's handwriting, including the first date. Body of deed in Herbert Clarke's handwriting, including the dates both in the jurat and deed.

No. 8567, A. C. Murray. Body of application in Schneider's handwriting, including the first date. Body of deed in Herbert Clarke's handwriting, including the dates of deed and jurat.

No. 8566, Annie G. Murray. Body of application in Schneider's handwriting, including the first date. Body of deed is in Herbert Clarke's handwriting and the dates of deed and jurat also.

No. 8565, M. M. Long. Body of application in Schneider's handwriting. Both dates also his handwriting. Body of deed and both the dates on the jurat and deed are in the handwriting of Herbert Clarke.

No. 8587, Jennie P. Blair. Body of the application is in Schneider's handwriting, also the first date. Body of deed is in Herbert Clarke's handwriting. The deed is acknowledged before Tricou, Notary, and I believe both the deed and jurat is in his handwriting.

(The deed was thereupon exhibited to the jury, together with a paper formerly introduced bearing Mr. Tricou's signature.)

1032 "Mr. BAKER. (In response to an informal inquiry of Mr. Worthington's): We claim it is the signature of Mr. Tricou. We claim that both of them are the same handwriting, that is what we claim.

"Mr. WORTHINGTON: We will not make any quarrel with you about that."

"No. 8675, Mary Ann Sexton. Body of application and first date in the handwriting of Schneider. Body of deed and dates in both deed and jurat in Herbert Clarke's handwriting.

No. 8572, Alice E. Jones. Body of application in Schneider's handwriting, including the first date. Body of deed, including date, in Herbert Clarke's handwriting.

I examined all these papers before I took the stand to testify about them. Made just such an examination as we are making now. I also examined other Oregon papers that were on these sheets. (The sheets were then marked for identification.)

The records of sixty-three other Oregon purchases—being records produced by the witness George C. Brown, and represented on the sheets above referred to—were then shown to the witness by counsel for the Government, and he testified as to same that some bear the handwriting of F. A. Hyde; some the handwriting of Mrs. Curtis; some the handwriting of the defendant Schneider, either his signature as a witness, or otherwise, or both; some the handwriting of Herbert Clarke; and some bear the handwriting of two of the persons named, in different places—quite a number bearing the handwriting of both F. A. Hyde and Herbert Clarke.

1033 Twenty-three of the said records embrace school lands described in counts 1, 4, 5, 8, 9, 10, 11, 15, 17, 18, 19, 20, 21, 22, 24 and 25 of the indictment. The remainder of said records embrace school lands described in List B of the bill of particulars.

The WITNESS (resuming): I was acquainted with James L. King, notary, who is now dead. Am also acquainted with Flora M. Sherman. She is a sister-in-law of F. A. Hyde. Am also acquainted with the firm of Sherman, Clay & Co., or Sherman and Clay. I knew Mr. Sherman personally. He is a brother of Miss Flora M. Sherman. They are music dealers.

I remember that Henry P. Dimond left San Francisco for Washington in the latter part of the year 1901, and returned, I think, in the spring or early summer of 1902. The lands in the State of Washington, of which I have spoken as being in the land account, were about 2,000 acres.

This witness was then shown application to purchase No. 2285, Independence Land District, name Elizabeth Dimond, dated September 11, 1897, filed September 14, 1897, and embracing lands described in count 26 of the indictment; also deed of relinquishment from Elizabeth Dimond to the United States (Exhibit No. 26), dated November 22, 1899, embracing the same lands; which application to purchase, and deed of relinquishment, are in the words and figures following:

## "Application to Purchase State Lands.

Location No. 2285.

Independence Land District.

STATE OF CALIFORNIA,  
*City and County of San Francisco.*

1034 To the State Surveyor-General, Sacramento:

I, Elizabeth Diamond, of Alameda County, do hereby apply to purchase the land hereinafter described, and in support of my application I do solemnly swear that I am a citizen of the United States, a resident of this State, of lawful age. That I desire to purchase from the State of California, under provisions of title eight of the Political Code, the following described land in Kern County, to wit: All, Sec. 16, T. 28 S. — R. 34 E—M. D. M. containing 640 acres. That there is no occupation of said land adverse to any that I have (a) That I am entitled to purchase and hold real-estate in my own name. That I desire to purchase the same for my own use and benefit, and for the use or benefit of no other person or persons whomsoever, and that I have made no contract or agreement to sell the same. (b) That said land is not suitable for cultivation; that I have not entered any portion of any lands mentioned in section three thousand four hundred and ninety-four of the Political Code (to wit, the unsold portion of the five hundred thousand acres granted to the State for school purposes, the sixteenth and thirty-sixth sections, and the lands selected in lieu thereof), which, together with that now sought to be purchased, exceeds (c) 640 acres.

ELIZABETH DIMOND.

Post Office Address: C/o H. S. Morris, Cor. 12th & Jackson Sts.,  
 Oakland, Cal.

Subscribed and sworn to before me, this 11th day of September,  
 1897.

GEO. T. KNOX.

*Notary Public.*

1035 (Seal: G. T. Knox, Notary Public, City & County of San  
 Francisco, Cal.)

(a) If there is an adverse occupation, then the affidavit must show that the township has been sectionized three months, and that the adverse occupant (giving his name) has been in such occupation for more than sixty days since the plat was filed in the United States Land Office—(Section 3495 Political Code).

(b) If the land is suitable for cultivation, then here add 'That I am an actual settler thereon.'

(c) If the land is suitable for cultivation, then the area to be here inserted must be three hundred and twenty acres; otherwise, six hundred and forty acres.

NOTE.—If the applicant is a female, the affidavit must show 'that

she is entitled to purchase and hold real estate in her own name." (Section 3496, Political Code.)

Lands belonging to the State which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law. (Constitution of California, Article XVII, Section 3.)

Any false statement contained in the affidavit provided for in section three thousand four hundred and ninety-five, defeats the right of the applicant to purchase the land, or to receive any evidence of title thereto, and if wilfully false, subjects him also to punishment for perjury. Timber lands belonging to this State shall be sold

for cash only; and the Surveyor-General and Register of the 1036 State Land Office must make and enforce all necessary rules and regulations to prevent the sale of, or issuance of any evidence of title to, any timberland of the State, except on payment in cash of the full price fixed therefor by law. (Section 3500, Political Code.)

All applications, under whatsoever Act, filed in the office of the Surveyor-General, must be retained ninety days before approval, and must be approved (when there is no conflict) by the Surveyor-General, at the expiration of six months; subject, however, to the provisions of sections thirty-four hundred and six and thirty-four hundred and seven of this Code; and all unapproved applications which have been on file over six months, wherein the approval has not been demanded or wherein the contest has not been referred to Court, or a demand made for an order of reference, as provided in section thirty-four hundred and fourteen of the Political Code, shall be null and void.

This Act shall take effect on the first day of August, eighteen hundred and eighty-five, and the Surveyor-General shall give notice to each applicant to be affected thereby, by sending to said applicant, or his attorney, a copy of this Act. (Section 3498, Political Code.)

"Each application must be accompanied by a deposit of \$20 and Filing Fee of \$5.

"Read your application carefully."

(Endorsed on back as follows:) "Cert. #13,941, Feby. 9th, 1898. Patent #9411, Jan'y. 23d, 1899. Application No. 2285, Independence Land District.

1037 All Sec. 16, Tp 28 S. Range 34 E, M. D. Meridian, Containing 640 Acres. Elizabeth Dimond, Applicant, C/o H. S. Morris, cor. 12th & Jackson Sts., Oakland. Received and Filed Sept. 14, 1897. M. J. Wright, Surveyor-General. By C. A. Bump. Approved Jan'y. 18, 1898. M. J. Wright, Surveyor-General, By ———, Deputy."

The deed of relinquishment from Elizabeth Dimond to the United States, above referred to as Exhibit No. 26, and dated November 22, 1899, is given in full in connection with the testimony of the witness Henry P. Tricou, in an earlier part of this bill of exceptions.

In the said application to purchase, the words "Independence",



"Kern", and the description of the land, are in Miss Isabella Kincaid's handwriting. The name "Elizabeth Dimond", and "Alameda", and the words, "and that I am entitled to purchase and hold real estate in my own name", and the address, are in the handwriting of Miss Laura Farwell. The date, "September 11, 1897", I don't know.

In the deed of relinquishment (Exhibit 26), the body of the instrument is in the handwriting of Mrs. Curtis. The "Elizabeth Dimond" in the body of the instrument is Mrs. Curtis' handwriting. The date "22nd Nov. '99" is not; I think it is Mr. Tricon's handwriting; also the writing in the acknowledgment.

Witness was then shown application to purchase No. 4356, name H. E. J. Palmer, filed September 19, 1898, embracing lands described in count 28 of the indictment; and he testified that the writing in the body of the application is in the handwriting of Schneider. The date and the words "Subscribed and sworn to" are in Mr. Tricon's handwriting. The post office address of the application is Schneider's handwriting.

Witness was then shown application No. 2470, name C. P. Carpenter, filed October 5, 1899, embracing lands described in bill of particulars; and he testified that the body of the application is in his own handwriting, including the address below the name C. P. Carpenter, "Care of F. A. Hyde, 415 Montgomery Street, San Francisco". I did not know anybody by the name of C. P. Carpenter.

Witness was then shown application No. 2469, name C. P. Carpenter, filed October 5, 1899, also embracing lands described in bill of particulars, and his testimony with respect to the handwriting was the same as that relating to application No. 2470.

This witness was then shown, by counsel for the Government, a number of records of applications to purchase school lands from the State of California, embracing lands described in the indictment or bill of particulars, and he testified with respect to the handwriting appearing on the applications and papers connected therewith, to the effect that portions of the papers were in the handwriting of Hyde or of some of the clerks in his office, and other portions thereof were in the handwriting of clerks in Benson's office; the purpose of the testimony being to show that part of the work relating to the said applications was done in the office of Hyde and part in the office of Benson; in other words, that some of the papers in each case emanated from Hyde's office, and some from Benson's office.

Among the said records were six in which the affidavits of two witnesses relating to the character of the school lands applied for were filled out in the handwriting of a clerk in Benson's office, and the other papers were filled out in the handwriting of some clerk or clerks in Hyde's office.

In one of said records the application to purchase and power of attorney were filled out in the handwriting of a clerk in Benson's office, and the affidavit of two witnesses as to the character of the school lands applied for, dated about August 16, 1897, was partly

in the handwriting of a clerk in Benson's office, and partly in the handwriting of the defendant Schneider, a clerk in Hyde's office.

In another of said records the assignment of the school lands was filled out in the handwriting of a clerk in Benson's office, and the records contains a letter from Hyde, not put in evidence.

In another of said records the affidavit of two witnesses as to the character of the school lands was in the handwriting of the  
 1040 defendant Schneider, a clerk in Hyde's office, and the application to purchase, the power of attorney, and the assignment were in the handwriting of a clerk in Benson's office.

### Cross-examination.

By Mr. WORTHINGTON:

I went to Hyde's office and was employed there on several different occasions. I went to work there early in the nineties. I do not recall very distinctly when I left there at that time, but it was in 1891 or 1892. I did not go back until June 1, 1899; and I was there until the 15th of October, 1902. During this time, from June 1, 1899, to October, 1902, there was a good deal of the time that I was not in the office at all, but was at Sacramento. I would be there several days at a time. During 1902 I was away from the office practically altogether for four or five months. That went through the summer up until practically the time I left. During those months I was in Sacramento. With the exception I have stated, my duties were in the office. When I was doing duty in the office, as a general thing, I was there during business hours. From the time I went there in 1899, until I left in Oct. 1902, so far as any clerical work in the office was concerned, Mr. Schneider did not do any after I got there, to my knowledge. He did not do any work in the office, only to settle his ranch accounts. He would come up there and settle his ranch accounts occasionally. During that time I do not remember Mr. Schneider's name appearing at 415 Montgomery Street. His name appeared at 630 Commercial Street. They  
 1041 were not on Commercial Street when I went back in 1899, and it did not appear there after I left in the nineties. I do not remember his name appearing at 415 Montgomery

Street. As I remember, there were two signs, on Commercial Street, one on either side of the door. One was "J. H. Schneider," and the other was the "Orestimba Land Company." I do not know personally whether he was vice-president or not, but he was manager of the ranch. I do not know whether the Orestimba Company included the ranch at Black Diamond or not; it included the others. It included the Gilroy ranches and the Oak Flat ranch.

I know C. W. Clark, whose name has been mentioned here a number of times. He resides in San Francisco. He formerly lived in Sacramento. He must be a man eighty years old now. The last time I saw him he was walking with a cane, which is rather unusual. That was three or four months ago. I have no personal knowledge of Mr. Clark's being a creditor of Mr. Hyde, with reference to lands in the particular Cascade Forest Reserve, and no personal knowledge

of his being a creditor of Hyde in respect to lands in Oregon. When any of the forest reserve bases were sold, the money was turned over to Mr. Clark—both Oregon and California. The only thing I had to do was to make a notation in the docket—the Forest Reserve Docket. I had occasion to go to Mr. Clark's vault, to get out certain papers when Mr. Hyde wanted to pay up in full to the State. The papers were in Mr. Clark's possession. There were various certificates of purchase issued by the State of California. I do not remember whether there were any issued by the State of Oregon—just by the State of California. I do not think that Oregon issued certificates of purchase—I am not familiar with the Oregon 1042 business. I think it was about 1900, February, 1901, when I went down to see about the payments to the State, and found that Mr. Clark had title deed.

Q. Could you give us any idea of the extent of the titles that Mr. Clark held in that way, as a security for indebtedness of Mr. Hyde? A. Mr. Clark held deeds for all these lands either from the applicant or from Mr. Hyde.

I cannot give the number of acres.

It was fifteen or sixteen thousand acres easy enough.

I have seen a large number of Mr. Hyde's notes that Mr. Clark held as evidence of indebtedness of Hyde's part to him in connection with the land titles. The titles which he held were supposed to be security for the payment of these notes. I have seen the notes in Mr. Clark's possession, and I have seen the notes when Miss Farwell has them while she was figuring the interest. I was acting as Mr. Hyde's clerk in going to Mr. Clark and dealing with these matters. I was not acting for anybody else. I do not know personally that Mr. Clark held these titles as security for the notes. Mr. Hyde told me that Clark had papers of his in Clark's possession. I went to the safe-deposit to get them out to make the payment to the State. They were California State lands within the forest reserves—sections 16 and 36. I do not recall Mr. Hyde having anything else practically, except 16 and 36, possibly with the exception of the Washington.

When I went to see Mr. Clark about Mr. Hyde's matters, I saw some of Benson's papers there, but I did not examine them. I had nothing to do with relations between Mr. Clark and Mr. Benson.

1043 While I was in Hyde's employ from 1899, until in 1902, the only books I kept were the joint accounts. The balance of the books were kept by Miss Farwell.

I kept the Forest Reserve Docket, which I made up from the old docket of Mr. Hyde when I first went to work for him. I put into this docket the different titles to school lands, or any lands within the forest reserve that were held by Hyde. The first docket did not contain anything except the history to the title of the school lands that Mr. Hyde had. The docket which I made up contained the history of the sales—to whom the land was sold and the particular subdivision sold. There was nothing in the original docket—number 19—to indicate that Benson had any interest in any of these

school lands. In the docket which I started there were entries made sometimes on joint account. This applied only to the lands that were joint. There were some in it where there were no entries made on joint account which had relation to Mr. Hyde's land. The words "Joint account" meant that Mr. Hyde and Mr. Benson were jointly interested in that location. I mean the sale of the base. I was not there in 1898. Shortly after making up that second docket, a dispute arose between Mr. Hyde and Mr. Benson, and I was detailed to settle that. Hyde told me to charge Benson at the rate of one dollar and seventy-five cents for all the Oregon bases, which I did. If a sale was made of school lands or the right to select other lands in lieu of them, if it was not joint account, it would be to the account of Mr. Hyde. If it was joint account, I would signify it by putting "J" at the entry. If the letter "J" was not there, it meant it was Hyde's. It is pretty hard to estimate the number of acres that figure in that joint account. It was something like fifty thousand acres. It was all the Oregon bases, or sufficient supplied by either Hyde or Benson to make up their quota.

Speaking of the papers which were prepared and given to a person to purchase one of these rights to select—where it had been decided to the United States, that is after the deed of relinquishment had been made and recorded in the county of the State of California where the land lay, and sent back to Mr. Hyde by the officer who recorded it—this deed to the United States, and the abstract of title and power of attorney to select and power of attorney to deed, would be surrendered by the purchaser.

Q. Would the papers all be filled up completely, and if not, to what extent would they not be filled up? A. No, sir; the assignment would be left in blank and the appointment of the attorney in fact. The power to select and the power to sell would be left blank. Both would be left blank as to the name of the person. Often times we designated these packages of papers as "Forest Lieu Scrip." The persons who would buy this land would come to the office and buy it, or it would be sent to them direct, or it would be sent to the bank, to be held in escrow. That was done more particularly outside of the State of California.

Q. Do you know whether or not that package of scrip would pass from hand to hand, as a commodity?

MR. BAKER: I object to that as being absolutely immaterial to any issue involved in this case.

MR. CAMPBELL: It seems to me it is material whether it is a commodity or not.

1045 THE COURT: After the land had been acquired from the State, and after the deed of relinquishment had been made to the Government, as to that part of it, I do not understand that there was any claim that there was anything fraudulent or irregular, except in the cases of fictitious persons.

MR. BAKER: Except in the manipulation in the General Land Office, which is entirely outside of the papers themselves.

MR. CAMPBELL: Insofar as we are concerned it is very material.

because it will be our contention, on the part of Mr. Benson, that in selling these he sold them on a deed of relinquishment, and took a power of attorney for his client to sell.

The COURT: I do not understand there is any quarrel between you and the Government about that part of the proceeding at all. I do not understand the Government to claim that was not legitimate.

Mr. PUGH: No; we do not make any claim about it.

The COURT: It is not involved in this case, as I understand the case.

Mr. CAMPBELL: That shortens the case, so far as I am concerned, very materially.

Mr. WORTHINGTON: It seems to me that there is another aspect of the case in which this evidence is admissible.

The COURT: Just one moment. It may be that counsel for the Government do not understand it as I do, as I see they are in conference. That is the way I understand the indictment.

Mr. BAKER: We say that nothing after the deeds of relinquishment were made and recorded is at issue in this case, at all.

The COURT: That is what my understanding has been".

Counsel for the defendants further stated and contended that in a great many of these cases the rights sold in the way we have been talking about are the very papers suspended by the suspension order, and the very papers that have been put in evidence in support of the conspiracy charge as an effort on the part of one of the defendants to have these cases go through the Land Office; that these rights were the rights which Mr. Benson is shown to have sold that came under the contract between Hyde and himself, which is in evidence; and that the mere fact that Benson was getting these papers and selling them, and putting them through the Land Office, of its self, did not tend to show that he had anything to do with the alleged fraudulent practices which might attach to the conveyance from the state to the defendant Hyde or to somebody through him, who got his title. If counsel for the Government will say that they do not intend to claim from the fact that the defendant Benson sold these rights, that this is evidence that he had anything to do with the alleged fraudulent practices which lay behind them, we would not press this testimony, but if they do make that claim we think it is material.

The COURT: They cannot claim anything that is not in the indictment, and I do not understand that there is anything in this indictment which claims that there is anything improper or fraudulent about that matter. If he did not have notice that those lands were procured by fraudulent practices from the States, and  
1047 was not a party to any conspiracy to pass off State lands to the United States Government, he cannot be convicted.

Mr. WORTHINGTON: If it is understood that the fact that Mr. Benson, after these lands were in shape to be conveyed to the United States, dealt with them is not to be considered as evidence that he knew anything about the alleged fraudulent practices——

The COURT: I do not understand that the bare fact that he sold them could be evidence against him, unless there was something in

the papers, or connected with the transaction, which put him on notice.

MR. CAMPELL: I understand the Government is going to introduce the abstract in the cases mentioned in the indictment.

MR. PUGH: So far as they are in the record, they will be produced.

MR. CAMPELL: If your Honor please, that cuts the case very short for me, because the contention of Mr. Benson in relation, particularly, to the Oregon lands, is that he purchased them on the abstract, and sold to his clients, as they were sold by all the other land officers, without any knowledge whatever as to the manner in which they had been acquired. He simply dealt with them on the abstract. It was my idea, before the concession we have from the Government, that we had the right to show that those papers passed as a commodity, as a certificate of stock.

THE COURT: I do not understand there is any concession. I understand it is not within the indictment, and that is all there is to it. If I do not state it as the Government attorneys understand their case, I want to be advised of it now.

To this counsel for the Government made no response, other than the following:

MR. BAKER: If your Honor please, Mr. Pugh suggests that so far as fictitious persons are concerned, the Government has the right, under the indictment, to carry the offer through all of the proceedings.

THE COURT: I included those cases in my first statement but did not in my last, because I saw, by what counsel said, that he understood me.

Cross-examination (resumed).

By MR. WORTHINGTON:

I said in my former testimony, I think, that in the account between Hyde and Benson, about which there was some trouble, Hyde had Benson charged with one-half of Mr. Diamond's salary.

"Q. Will you tell us whether or not Mr. Benson made any objection to that? A. No, sir; I don't know whether he did or not.

"Q. I want to know whether he made any objection to being charged with one-half of Diamond's salary. A. No, sir.

I know Mr. Allen who was on the witness stand here. He was at one time forest supervisor. During the time I was in Hyde's employ, from June, 1899, until October, 1902, I never saw Mr. Allen. I never saw him until I met him here in Washington four years ago. I was with Mr. Hyde two or three years early in the nineties, somewhere about ninety-one, ninety-two or ninety-

1049 three, and then I was there from June, 1899, until October, 1902. I was there once for about a month in 1878. I was secretary of the corporation of F. A. Hyde & Co. when it was formed. I had no knowledge that Benson ever had any connection with the business of F. A. Hyde, or the corporation of F. A. Hyde & Co. Practically all of these state school lands were filed prior to the time I went with Mr. Hyde in 1899. Patents were obtained after I got there. The original application had been made and approved.

"THE COURT: You say practically all; were they all? A. No,

sir; there were a few that were not. I cannot from memory give you any idea of the number of acres that were in question."

I filled out two of these applications, to my knowledge, that were presented this morning. It was whenever the date of filing was; I think in 1899. I had nothing to do with it except the clerical work. When I returned to the office in 1899 this private telephone between Hyde and Benson was there. It was not there when I was with Hyde in the early nineties. In the regular line the telephone company charged five cents a message in 1899. Every time we used it we had to pay five cents. In Mr. Hyde's office there was a record kept of every filing of state lands made in the State of California. Whether it was made by Hyde or anybody else, it was a copy of the record from Sacramento, so that he had in his office practically what there was in the office at Sacramento, to a great extent. He had a list of all the filings by anybody. Mr. Benson had these filings himself. I have seen the books in his office. He had a corresponding set of records of the same kind. Mr. 1050 Hyde hired somebody in the State Office to send him the filings every day. I have not any personal knowledge as to how Benson got his information for his books. In a general way, when I was down in Sacramento, I was examining State records, in order to file State indemnity selections. It had nothing to do with this forest reserve business.

I do not remember ever having seen Mr. Allen in Mr. Hyde's office. My desk was in a little hall room to the south of Mr. Hyde's room—that is, it was a connecting room between the main office and Mr. Hyde's room. I met Allen here in Washington four years ago; that is the first time I remember seeing him.

Witness was then shown Exhibit No. 197, being the map of the Lake Tahoe Forest Reserve referred to in the testimony of the witness B. F. Allen, and he was asked whose handwriting appears thereon. He answered: "The numbered ranges are in Mr. Hyde's handwriting, and also townships 9 to 15 North." (The ranges referred to are, 12 E., 13 E., 14 E., 15 E., 16 E., 17 E. The townships referred to are, 9 North, 10 North, 11 North, 12 North, 13 North, 14 North, 15 North.) Looking at the matter written in blue pencil, in the center of the map, "That is in the handwriting of Mr. Hyde."

Witness was then shown Exhibit No. 194, being the map of the proposed Lassen Peak Forest Reserve referred to by the witness B. F. Allen, and he was to examine and identify, if he could, the handwriting thereon. He answered: "It is in the handwriting of Mr. F. A. Hyde and also in the handwriting of Mr. Schneider. The words, "All of this territory is good timber land, but its reservation is not recommended because of the large quantity of land that has 1051 been disposed of" is in Mr. Hyde's handwriting." The balance of the writing is in the handwriting of Mr. Schneider with the exception of the red figures, which appear in various places on the map, and which I believe are in Mr. Hyde's handwriting, and also the 4 E., 5 E., 9 E., and 10 E.

Witness was then shown Exhibit No. 372, being a map referred to by the witness B. F. Allen in connection with the Cinder Springs Forest Reserve, and was asked to state whose handwriting



appears thereon. He answered: "The letters and figures, T. 47 N., R. 10 W., M. D. M.; T. 48 N., R. 10 W., M. D. M.; T. 47 N., R. 9 W., M. D. M.; and T. 48 N., R. 9 W., M. D. M., are in the handwriting of Mr. Hyde. The word "Oregon" is in the handwriting of Mr. Schneider. As to the balance I don't know." (The word "Oregon" appears at the top of the map written with pen and ink. The other letters and figures appear at different places on the map.)

Witness was then shown Exhibit No. 366, being a map of the Santa Ynez Forest Reserve referred to by the witness B. F. Allen, and was asked to state whose handwriting appears thereon. He answered: "In what would be township 5 N., Range 24 W."—right under that is in the handwriting of Schneider. The letters and figures are in the handwriting of Mr. Schneider. That is all that I see that I recognize." I do not know anything about the making of this map.

Another map or tracing of the Santa Ynez Forest Reserve, also referred to by the witness B. F. Allen (Exhibit 363), was then shown to the witness, and he testified that the handwriting of F. A. Hyde appears thereon; that the tracing was made by himself. I remember making the tracing, but I cannot recall just when.

I made it at the direction of Mr. Hyde, and I copied it, I think, from some county map or some state map that I got hold of. I cannot see my handwriting or the handwriting of Mr. Schneider on the document. In answer to a question by Mr. Worthington, I referred to the fact that the joint lands were marked "J". The old lands in the new docket were marked "Hyde and Benson", on the Oregon lands, if I remember right. The other lands that Mr. Hyde owned jointly were marked with whom they were owned. I do not mean to say that the Oregon lands were the only lands that were in the joint account. There were other lands in the joint account. It is my recollection that there were certain locations that were made when Mr. Benson furnished his own base, which were in joint account.

#### Recross-examination.

By Mr. CAMPBELL:

Q. This joint account was a joint sales account of the Oregon base—sold by Benson and charged to Benson? A. Yes, sir.

Q. You said some of Mr. Benson's base was in that. Mr. Benson used some of that joint base for his own individual purposes, did he not, and then he replaced that with some of his own. Is not that the way it came in? A. Yes; that is true; Mr. Benson did use the Oregon base for his own personal account, and then he replaced it with other bases.

Q. And the entire matter, with that exception, was where Benson had sold the Oregon base and it was a money transaction; was it not? Benson had sold the Oregon base lands and Mr. Hyde owned the Oregon base; did he not? A. No, sir; it was owned jointly between Mr. Hyde and Mr. Benson.

Q. Who acquired it? A. That was acquired before my time.

Q. What you know is that they were interested jointly in the pro-



ceeds of selling the Oregon base land? A. What I know is that Mr. Hyde told me that Mr. Benson had an equal interest with him in the Oregon bases, and to charge him up at the rate of a dollar and six bits an acre.

Q. Did he tell you anything about the contract of 1898? A. No, sir.

Q. Did you know anything about it? A. I never heard the contract read until last night.

Q. Then you don't know how Benson got his interest or how he had his interest in that State? A. Not of my own knowledge; no, sir.

Recross-examination.

By Mr. WORTHINGTON:

I cannot recall anything about one of these posting notices signed by Hyde, except one; have no personal recollection of that particular case, nor of the other of these two notices. The paper does not identify the transaction in my mind. I was sent to Visalia to make some locations in that territory, but whether this is one of them or not I do not know. I do not remember whether Mr. Hyde made one himself in his own name. I cannot recall now. I traced one of these maps; I recognized my work on it, except Exhibit 363. I traced it from some map. I made what 1054 appears on the map outside of the writing on it, outside of the handwriting of Mr. Hyde. I put the printed description in. The words, "Santa Ynez Mountain", are in my handwriting. I put that in. I traced this from some map of Southern California, that I got hold of; some public map.

By Mr. CAMPBELL:

Mr. Hyde told me the cost of the Oregon lands was \$1.75 an acre, and to charge Benson with one-half of this; and Hyde was credited with the other half.

During all the time I was in Hyde's office I do not know of Schneider's doing any work for Benson. Mr. Benson, so far as I knew, had nothing to do with the Hyde ranches, to my knowledge. The profit of the Oregon base was divided equally between Hyde and Benson. The cost of it was put at \$1.75 per acre, and when the land was sold there was an equal division of the profits.

By Mr. VANDER VEER:

I testified that Dimond came to Washington in the fall of 1901. I testified that there was prepared in Hyde's office and sent to him in Washington certain slips or papers of all cases pending in the Selected land Docket, and pending in the General Land Office. It was made out in Hyde's office. My recollection is they were not fully concluded at the time Dimond left, and were sent to him afterwards. Cannot remember just when they were sent. It was shortly after Dimond left. Would not attempt to say the exact time. Cannot recall that they were sent in December 1901. They were sent before January 1, 1902, I think, but would not be positive; I know

1055 the purpose for which they were sent to Dimond. Mr. Hyde never told me what his purpose was in sending these slips to Dimond.

These papers shown to me do not appear to be the slips. The slips I refer to were about four or five inches wide, and about the length of this paper (indicating). From the examination I have made, I do not find among those papers any of those to which I referred to as lists sent to Dimond from San Francisco.

I have never prepared any of these slips. I know of quite a number being prepared. I saw them. It was a memorandum of the selections, and was on a piece of paper about four inches wide, perhaps six or eight inches long. It gave just a synopsis of the selections. I never made out any myself, but I have had occasion to remember them. I could not from memory state the contents of any of them positively. Generally there was a docket number, and the locator and a description of the land located and the lieu or the base. That is the best of my recollection as to what is on them. My recollection is that there was a slip prepared for every unacted upon selection that was in the docket of Mr. Hyde. I had no occasion to remember how many there were of such cases. I could not state whether there were one hundred or two hundred or three hundred. I saw a pile of papers, perhaps two or three inches in thickness or more. They were on ordinary letter paper, just a slip of paper of the ordinary thickness. I do not know whether they were all sent at one time. No, sir; those are not the papers (exhibiting papers to witness). Looking at the first page of this, I never saw it before, nor those which follow it. I have never seen them before, except

1056 a few moments ago when I opened that package. Looking at these, I cannot state whether that is the land which was pending in the General Land Office information in respect to which was sent to Dimond. I cannot state whether or not this describes the applications that were pending in the General Land Office as far as the records of Mr. Hyde's office were concerned at that time.

I am acquainted with Dwight M. Augier. He is at present a clerk in the State Surveyor General's Office at Sacramento. He was at one time connected with Mr. Hyde's office, succeeding me there. Shortly after I left he went to Mr. Hyde and remained there for some two and one-half or three years, to the best of my recollection.

Cross-examination.

By Mr. CAMPBELL:

I went into Hyde's employ June 1, 1899, and left it October 15, 1902.

The settlement of that joint account was commenced some time during the winter of 1900, and finished in the early spring. Mr. Dimond went into Mr. Hyde's employ some time in the summer of 1901. So far as I know, there never was a settlement between Hyde and Benson, where a balance was struck, except the one testified to above. There were monthly statements to and from and we secured monthly statements of the amount of land that Benson sold or collected for. I don't know of any settlement of this account where

there was a balance struck, after Dimond went into Hyde's employ. The dispute arose and the adjustment was commenced in 1900, as I recollect. I don't know when the joint account began—these lands were most all of them sold prior to the time I went 1057 there at all. There was never any settlement to my knowledge between Hyde and Benson after Dimond began to work for Hyde. There were monthly statements rendered to Benson, showing that Dimond's wages or salary was included in the account. It was rendered every month as long as I was there. The monthly statements included Dimond's salary and expenses while in Washington. There was no protest made by Benson. There was never any discussion about it between Benson and Hyde, in my presence. I don't know anything about it. I don't know of my own knowledge—except what I have heard—that that account never was settled, and that Hyde sued Benson, not only on that account, but on notes, and that Benson refused to settle, and there is litigation now pending between them in the courts of California.

By Mr. VANDER VEER:

I am sure I don't know whether Mr. Dimond had knowledge of the charging of these expenses and salary in those statements. Mr. Dimond was here (Washington) and was there part of the time. When these charges were made, he was there. I don't know whether he had knowledge of them. I never heard Mr. Dimond refer to this joint account.

Mr. Benson rendered certain Washington expenses, but I don't remember just exactly what they were.

WALTER K. SLACK recalled for further examination.

By Mr. BAKER:

I have been to the office of the Surveyor General of the State of California a great deal. I am familiar with the office. They 1058 keep the record of all the filings. That record shows the number of the application, the name of the applicant, the address of the applicant, a description of the land, and the date filed; also, if there is an attorney mentioned, either the post office of the applicant, or the name of the attorney. This appears on the filing record—a book of filings for each district. In addition, they have the map books, the record of the certificates of purchase, and the action on them; a record of patents, a patent book, a swamp and overflowed application book; a book of record of the certificates of purchase of swamp and overflowed lands; also patents, under the five hundred thousand acre grant, and under the school land warrant grant; tide lands. Those are the principal books. They have a book that they keep a sort of diary in. I don't know what they call it. That was kept by the filing clerk, in which he made a record of all the filings, with the date of the filings. He made these records at the time the filings were made. I have examined those books for years. If I wanted to find out who the attorneys were in a particular case, which was filed during the year of 1902, the first

thing I would do would be to look at the record of filings. Then if that did not give me the desired information, I would go to the application itself, or possibly to the stub of the certificate of purchase, if a certificate of purchase had issued. If that did not give me the desired information, I would ask the filing clerk who filed the application. I have made this inquiry of the filing clerk. He would refer me to a *dairy* or a memorandum book that he kept, I have seen those books. This is one, I think (examining Daily Journal 1902.)

1059 I am familiar with the Hyde filings in the office of the Land Office. Filed a great many applications for Mr. Hyde. I would see the name of Benson, attorney, once in a while on the record. Sometimes the name of Mr. Hyde or the name of Mr. Benson, not always, appeared on the General Docket, in connection with the cases that they filed. I have seen that book before, I think (indicating Daily Journal 1902). No, sir; I did not get this book No. 2 and go over the book and make a notation of the cases that were filed in Mr. Hyde's name and the cases that were filed in Mr. Benson's name. I never did it.

I have become familiar with the office of the Surveyor General of California since 1887. They have kept this daily diary ever since I can remember. I have seen the book used when I was there.

#### Cross-examination.

By Mr. WORTHINGTON:

I have seen the man keeping this book. Charlie Bump kept it most of the year 1902. He left the office the latter part of 1902. The record of filings was a different kind of a book. It was the regular filing records. Each district had a book of filings, giving the number, and the date of the filing. When I took an application there to be filed, I delivered it to the clerk. The clerk would first examine the record to see whether or not it could be filed, and if he decided it could, he would file it in the record book in the district in which the land was situated, and he would enter there the items I have mentioned, the name of the applicant, and he would give it a number.

1060 I would take its serial number. He would enter a description of the land, the date of filing, and if there was an attorney, who the attorney was. If there was a power of attorney filed with the application, he would put the power of attorney down. I couldn't say whether he would do the same thing with a letter written from an attorney, because I never watched the man actually put it down; but I knew what the custom was, so far as applications that I had anything to do with. I filed hundreds of cases without a power of attorney, all kinds of applications; sometimes they would have the applicant's name. They would get it from the application itself. When I spoke about the book, I only spoke about the rules in my own case. That is the only one I am familiar with. Sometimes I would just say to put down the name of the applicant, where there was no power of attorney. If there was a power of

attorney filed with the application, the book would certainly then contain the name of the attorney; and any case where the name of the attorney was not entered in that filing book was where there was nothing accompanying the papers to show who the attorney was, or whether there was one.

I have filed many applications coming from Mr. Hyde's office, where Mr. Hyde was the attorney, and where there was nothing on the papers that I filed to show who the attorney was. They would be applications right from the applicant where Mr. Hyde's name would not appear. In those cases, the filing book would not show anything about it. They would know that I presented them while it was fresh in their minds on that day. They were supposed to know that I represented Mr. Hyde. They would not put  
1061 them on the filing books, though. They would put that entry in the diary. As a rule, before the office was fenced off, this diary was always kept in the desk of the filing clerk. The office was fenced off during the administration of Mr. Wood, sometime between 1904 and 1907. Wood just preceded General Kingsbury. Wood was in four years. Mr. Wood would not have prevented my seeing those diaries if I wanted them. I would have simply demanded them; that is all. I don't know whether the privilege of seeing them was given to others.

If I went there to file some applications at the instance of Mr. Hyde, and there was nothing in the papers to show that they came from Mr. Hyde, as a rule, they would file them as coming from Mr. Hyde, without my saying anything to them. I don't think that if I went there in the ordinary way as his agent, and filed some of the applications, that they would enter them as coming from me. I might have filed some applications on my own account after I left Mr. Hyde's employ, after October 15, 1902. Before that I was not doing business on my own account, while in his employ.

By Mr. BAKER:

"Q. Mr. Slack, on examining this Book (referring to book 1, 1902), we find some entries where your name appears. Take, for instance, Tuesday, January 28. I will ask you if you can explain that to the court."

(W. K. Slack is entered in person as the person filing that paper on that date.)

"A. Well, that entry, to me, would mean that I filed that application in Sacramento, personally. That is to say, I represented it at Sacramento, for filing."

1062 By the COURT:

I have noticed that the persons keeping this record making the entry like this, put down my name in person. I have known it. I knew about its being made as to entries on filings that I was having made, where I was filing a number of applications at that time. I don't recall the date now, but I remember his putting them right down by me as filing in person. I can't state absolutely as to any

of the entries here of filings followed by Mr. Hyde's name and address, whether I made them personally, took them to the office or not. I couldn't say positively whether in any case where I took the papers there in person, they entered Mr. Hyde's name. The practice, so far as I know, was that the party who actually presented, by mail or in person, an application to the Land Office, it would be entered in that book in the name of the party presenting it.

By Mr. WORTHINGTON:

I said a while ago that when I would go down there and file applications on behalf of Mr. Hyde, when nothing appeared in the case to show that he was the attorney, they, knowing me to be his representative, would enter in the book that he had filed them. I have seen them do that.

"Q. Then what do you mean by saying now that when you would file them, they would put 'entered by you in person?' A. You asked me for a particular case. I cannot tell you on a simple entry in a book, without the application before me, to call something to mind, whether John Smith on a certain day filed an application——"

I only know the custom in reference to the cases where I filed them myself. I don't know whether they pursued the same custom with others. I don't know what they might have done to other people. I only know what they did to me.

By Mr. BAKER:

I have simply taken the applications and called the names off to Mr. Bump while he wrote them in the book, when he has been in a hurry, and it was late. That is what I meant when Mr. Worthington wanted to know what I had to do with the making of the book.

By Mr. WORTHINGTON:

I have requested personally Mr. Bump to put them down in my own name when they come from Mr. Hyde, and they would be put down that way. When I went there and filed applications personally, they would put them down as having been filed by Mr. Hyde, so far as I know, unless I requested them to put them down as filed by me in person. I would request Mr. Bump sometimes to put me down personally as the attorney.

"Q. Well, I understand that; but as a matter of fact, without regard to what you would say, sometimes when you filed a paper there, the entry would be that Mr. Hyde filed it, and at other times it would be that you filed it. A. That book would show that; yes."

I don't know what the custom was in that regard in reference to filings by other people or through other attorneys. I only know what my own was.

By Mr. CAMPBELL:

I don't know whether the book was correctly kept or not.

1064

*Joseph Naphthly.*

By Mr. BAKER:

I reside in San Francisco. In 1897 Mr. Friedlander, a friend of mine, called at my office. He said he had been informed there was an opportunity to take up school lands; that the State was offering for sale, and that I had a good chance to make a good purchase. I asked him who told him, and he said Marcus D. Hyde. I told him I did not want to buy school lands for fear it might affect my right to take out a preemption of homestead claim, as at that time I had a suit pending in the Supreme Court of the United States, in which the title to my ranch was involved. And if it was decided against me I might be forced to take out a homestead claim on the place where I was living. He said: "There is nothing in that at all. You had better go and find out about the matter," and I went to M. D. Hyde—to his office in Montgomery Street, in the same place where his brother, F. A. Hyde has an office. I think it is the same building, 415 Montgomery Street. M. D. Hyde is a brother of F. A. Hyde, but I do not know whether they were partners or not then. When I employed them they were F. A. & M. D. Hyde. He said Mr. Hyde said there was no danger about taking up this land; that I could take it up just the same as any other citizen, and that I could then go on and preempt my land or homestead, just the same as anybody else. He suggested that I had better take up some of those lands; that it was a good speculation; that I would make money. I returned to Mr. Friedlander and told him I was disinclined to take it up. He kept on bothering me, and finally I consented. He subsequently brought me an application. I do not know where the land is. He brought a blank power which I signed. I paid Mr. Friedlander \$25.

I do not know whether I appeared before a notary or not. The notaries were Knox and Mason, and I may have gone there with my papers, but I do not know. It is impossible for me to recollect what occurred ten or twelve years ago. After I signed them I gave the papers to Mr. Friedlander. He was to attend to everything, the payment and so on. I was to have no trouble about it at all. I did not make any further payments upon the land. About a year ago, when I was about to be summoned to come here, I made inquiry of Mr. Hyde about what became of my land, and he said he bought it from Mr. Friedlander. That he brought him a deed from me for which he paid him \$100. I think, and that Mr. Friedlander had handed him a deed for the property. Mr. Fred Hyde told me that. I had no further conversation with him about it. Mr. Hyde paid me no money; He paid it to Friedlander. Very soon after the application was made Mr. Friedlander paid me back my \$25. When I told Mr. Hyde about this he said that Friedlander had brought him my deed and that he had paid him for it. I told him I had no recollection of selling the deed. He said it was my deed all the same. I asked if it was in existence, and he said he was sorry it was not; that all his papers were burned, and he could not show it to me.



Of course I could only give the substance of the conversation I had with Friedlander. When I got back my \$25. Friedlander wanted me to give him an agreement or promise I would give him one-half the profits, and I declined to do it. He kept bothering me, and finally I told him I did not want anything to do with it at all. That he could take the whole thing himself—and he gave me my money back. I have no recollection of signing a deed conveying that property. I may have done so all the same. But I have no recollection of it. My description of M. D. Hyde is that he is about as sparse as Mr. Neuhausen, but not so tall, a man about fifty-five or sixty years of age; that he was an old man, because he wore a Grand Army button. He has a florid face, I think, with a light moustache and light hair—a stout man. There is some gray in his hair. I am five feet, four—I do not know how tall I am—M. D. Hyde I do not think is as tall as I am.

#### Cross-examination.

By Mr. WORTHINGTON:

I do not know how tall I am, five feet, six. M. D. Hyde is still living, I hope. I left him in the city. I saw him in San Francisco about a month before I left. He has a florid face. I have taken lots of drinks with him, but I never saw the man drunk in my life, and I have known him for thirty years. I should say he has the appearance of a man who drinks—he has a florid countenance. But sometimes a man with a pale face is a drunkard. I am a member of the bar, and have been a practicing lawyer since 1865. When Mr. Friedlander gave me back my \$25. I told him to take the land and do what he pleased with it. I had made the application and knew, of course, that if any certificate of purchase was issued it was issued to me. Mr. Friedlander could ask me for a deed, and I would give it to him. If he was to ask me for a conveyance, I would give it to him. I do not remember anything about whether I gave

him the deed. It is possible I may have given him the deed, as the relations between us, are so many between property that it is impossible to have a distinct recollection about it. I own all his property in my own name; have had title in my own name for years and years. My relations with him were such that if he asked me to sign a paper conveying title to him, I would have done it. I simply have no recollection of whether I ever did it or not.

When I went to Mr. Hyde, he told me there had been a deed made by me. He did not tell me to whom the deed had been made, but I understood it had been made to him (Hyde). I asked him who owned my land, and he said he did. That he had bought it from Friedlander; that Friedlander had a deed from me. I told him I had not the slightest recollection of any such transaction or of having made any such deed. He said it was my deed anyhow. It was about ten years after I got back the \$25 from Mr. Friedlander that my attention was first called to this subject. I had no occasion in the world to bother my mind about the subject in the meantime. When I signed the application I think I was in my office. I do not



recollect about it. It is impossible for me to recollect about it. Right next to me is Knox, the notary; and right opposite to me is Mr. Mason. I do not recollect whether I went before one of these notaries. They would not come to me. I would either go to them, or I would have a man to take them over to Knox and say: "This is Naphly's signature," and he would sign it. Up until a year ago when the legislature passed a law, making — a misdemeanor for a notary to take an acknowledgment that way, I would send papers to him, and have some person tell him it was all right. It was the practice in California with notaries and business men. That is the way we did it.

1068

*Erwin Rittenhouse.*

Direct examination.

By Mr. BAKER:

I am employed in the General Land Office in the Interior Department. Am principal examiner of Land Claims, but just now am doing miscellaneous work. In 1902, I was a clerk in the General Land Office. I was detailed in connection with the Hyde-Benson-Schneider case, and in the Spring of 1904 went to San Francisco, California, and was present at the hearing before Commissioner Heacock. The defendant Dimond testified at the hearing as a witness in his own behalf.

Witness then qualified as an expert on the question whether different typewritten papers were written on the same kind of machine, and certain Exhibits 418 and 490 were shown to him, and he testified that they were written on the same kind of machine. He testified the same as to Exhibit 479 and Exhibits 391 and 399. Also that Exhibits 430, 432 and others were written on the same kind of machine as Exhibit 490.

Other evidence was introduced by counsel for the Government in connection with the testimony of this witness, tending to show that certain typewritten anonymous letters Exhibits 395, 396, 397, 398, 399, 403 and 405 were written by the defendant Henry P. Dimond; and that certain other typewritten letters, Exhibits 391 and 401 signed "Truth," were also written by the defendant Henry P. Dimond.

1069

*John F. Shearman.*

Direct examination.

By Mr. BAKER:

I have made a study of handwriting, and have had practical experience in examination of actual disputed documents in handwriting; I have also studied typewritten documents, for the purpose of determining whether or not they were the product of the same identical machine.

On these subjects the witness duly qualified as an expert.

Thereupon the witness was shown by counsel for the Government, Exhibit No. 479, being a typewritten letter of July 22, 1903, proved to have been signed by Henry P. Dimond, and addressed: "My dear Browne," and was asked to examine the portions of the letter introduced in evidence and to compare the same with other typewritten letters, and among them a typewritten letter addressed, "Mr. Secretary," Exhibit 391 and signed "Truth;" a typewritten letter, Exhibit 399, addressed "W. J. B.," and signed "Truth;" and also with other typewritten anonymous letters, Exhibits 395 to 398, both inclusive, and 401 and 403.

Witness then proceeded to give in detail the points of similarity in the typewriting in the various letters referred to. He stated that in his opinion all the letters, Exhibits 479, 391, 395, 396, 397, 398, 399, 401 and 403, were written on the same machine; and that the several envelopes enclosing the said letters, other than Exhibit 479, were addressed on the same machine as the letters.

This witness was then shown by counsel for the Government, Exhibit 469—being a letter written in long hand, and proved to be in the handwriting of the defendant Henry P. Dimond, dated February 13, 1903, addressed, "My dear Browne," portions of which were introduced in evidence, and also Exhibits 483, 484, 485, 486, 487, 488, being purported copies, written with lead pencil, of some of the aforesaid anonymous letters, and proved to be in Dimond's handwriting; and he said that he had examined the portions of Exhibit 469 that were admitted in evidence and compared the same with the other exhibits mentioned, and also with Exhibit 393, being an anonymous letter printed with pen and ink and addressed, "Mr. Secretary," and he was asked to state whether he had found any similarity in the writing, and answered that he had.

He further stated it to be his opinion that the said Exhibit 469 and the said Exhibit 393 and also the said purported copies of anonymous letters, Exhibits 483 to 488 inclusive, were all written by the same person, and he proceeded to give the reasons for his opinion.

By testimony previously introduced it was shown that during the month of December 1903, and the month of January 1904, certain of the anonymous letters referred to by this witness and the witness Rittenhouse were received by mail by the Secretary of the Interior, and certain others in the same way by the witness William J. Burns (as W. J. B.), addressed to them at Washington, D. C. Others of said letters were addressed to the defendant Dimond. All of said anonymous letters and certain letters signed "Truth" were thereupon introduced in evidence and read to the jury as against the defendant Dimond only. The subject matter thereof, and the statements contained therein, as well as other evidence in the case, tended to prove that the said anonymous letters and letters signed "Truth," were written by the defendant Henry P. Dimond, and that the said Dimond was a party to the conspiracy charged in the indictment on trial. Said letters were as follows:

## EXHIBIT No. 391.

SAN FRANCISCO.

MR. SECRETARY: Note the school sections taken in the lands withdrawn in southern Cal. You will find that F. A. Hyde and John A. Benson through their "dummys" have them all. You will find the same parties have all in northern California although their names do not appear. If Stace had been worth the powder to blow him up he would not have talked so much at Sacramento, your men were fools. H knew every move that was made and blocked them at every turn. You will find the truth was told in Arizona but your men weren't smart enough to nail it or use it when you got it. You better find why W. K. Slack remained in H's pay after he left his employ. Why did you not find E. Diamond? or Jennie Blair you saw their names on the deeds, *someone* must have signed. So Stace told you he heard of her (Elizabeth) in Oakland did he? ha, ha, the Bush was too thick for him and obscured his judgment. Call him up again and ask him if it ever occurred to him that someone was *Hyde-ing* behind that particular Bush. You will find C. W. Clark is owed so much money he has to stand in. You will find that all the parties who give so good a character have been let in on the boodle. You will find your suspension order the best

1072 thing you ever did if you follow it up. Send good men if you have any, grand jury, arrest, and make public, that is the thing. How much he paid his dummys, his barber and friends. Get hold of his "pet" A. Dickenson, she knows a thing or two and would tell on the stand. Show up his double life and above all stop your office leaks. If this letter is sent to Frauds Div. he will know it in two hours. Set a trap there, watch the mail and telegraph and *the men you trust the most* and you will land your fish. Find out why Dimond and Britten and Gray want no more business from H. In justice to yourself and your office push this with some intelligence and save a little of the public lands. Can there be so much smoke without some fire. Poor old Boss Bailly is now sent on to pull the wool over your eyes, he at least is innocent and like the rest will quit or get fired when he is of *non* more use. Better watch his work though for H is planing a new grab that will have a "salt" flavor this time. You got rid of two in the map Div. but *the-* are three others elsewhere yet in his pay. He *he* does laugh when the prompt reports of all your action and plans come in. Even from your side of the street Mr. Secretary. Money to your poorly paid help will do anything, but they have learned to charge. The information *sant* one day *after* you got it from Arizona cost a thousand, but look at the result, you have spend much more and are—LEFT. We deeply regret that we are unable to be more explicit or disclose our identity and are even mortified at the necessity of writing thus anonymously, and of even admitting that it is done in a spirit of revenge for the loss of a few thousand dollars.

But it is the contemptable manner *it* which we were gouged

1073 that is so galling. Again, it is not fair to ourselves to attribute this letter as wholly written for revenge. We do like

fair play and honesty and this man has an ounce of real honesty in his make up, and should for the good of the country have his crimes laid bare before the community.

If the Government wishes to act in this matter and really plans to punish the guilty, any question incerted as a personal in the S. F. Chronicle and signed "Government" will receive a prompt reply.

Very respectfully,

"TRUTH."

EXHIBIT No. 393.

MR. SECRETARY: When Mr. Pugh and Mr. Stace started for Arizona your trusted "Frauds" Div., wired Hyde full particulars and details of what Schneider had said. As a consequence they failed to get him to repeat it. Mr. Burns also failed because he is not a careful man and talked too much of what was to be done. Hyde again was fully informed, and naturally bought Schneider. He has at all times full advance information and owns so many of your clerks and so many state officials your case will be hard to prove. His statement to the S. F. "Call" published to day (Nov. XXII) is of course *false*. He has been in daily touch with Schneider from the first—If you now press your advantage you have him, for he cannot be liberal to anyone and always makes not only bitter but *active* enemies.

1074 Don't fall into the error of supposing Benson is a member of any of the Hyde Co's., Benson is simply a tool to carry out schemes and Hyde takes half the returns so his name may be kept out. Benson is always "hard up" and Hyde loans him money to hold him in his power. Each *hates* the other, and either would testify against the other to save himself. Your men did not know that Hyde owns the [Attorney]\* Surveyor General Wood, and talked too much at Sacramento. Hyde paid Wood's election expenses and has paid him \$100 a week ever since. Four fifths of all the state locations made in the last six months have been made by Hyde and Benson. But have been made so Hyde's name does not appear. He has supplied the money and every name is really his dummy bought for \$5 \$10 or \$20. They get advance maps of every withdrawal—No one owns stock in Hyde's Co's., but Hyde—and he is paying your officials in five local offices so as to always be *first*. Go for his book and the private record between he and Benson—Get Benson on your side, if you can convict Hyde you can afford to protect Benson—But be warned, you may also bring in Perkins and some of the other men who have tried to shield Hyde.

Non-existent dummies have been used in the past, and the state never parted title to some of the land used as basis for F. R. S. He has thus tried to defraud the Gov (and has done so) in offering titles he knew to be fraudulent. Look up 16 XXX N. XIII W. W. M. XVI VI N. XVIII E. M. D. M. XVI IV. N. XXI E. M. D. M. XVI XL S. VII E. W. M. and XVI or XXXVI Sec. in the following Townships, XXXI S. II E. W. M. XII S. XXVII E.

M. D. M. II N. XVIII W. S. B. M. Sec. XIII IV S. IX E.  
1075 W. M. IV N. R. XIII W. S. B. M. XVII S. XXXIII E. S. B. M. V N., XX E. M. D. M. XXVI S. XXXI E. M. D. M.

XXIII S. XXXVII E. M. D. M. VIII. S. VIII E. S. B. M. and Sec. XXXVII XXVIII S. XXX IIII E. M. D. M. which you already know about—Forged deeds and “dummys” in all these cases—Remember notaries were paid large sums—In *no* case do parties ever appear personally before *Burnes* Hyde’s S. ‘F. notary—Try it. Send some one to him and offer a deed to be acknowledged, let your secret service man say—“This comes from Hyde” and see how quick he will put on his seal.

Employ local counsel to help but let *Banning* push it. *Banning* knows Hyde and will leave no stone unturned—Make Benson turn state’s evidence at any cost and you will nail the guilty party. You can work B through his mistress. Mrs. Curtis tried to do the Government a turn long ago, but did not know enough. Walter Slack dare not, but he knows all Schneider told Brohaski in Arizona. He worked first for Benson then for Hyde. Ran the whole state lieu business. Find what Hyde has done with the books Laura Farwell kept. Four days after Schneider told M. D. Hyde and Slack were with him in Arizona. And your men never got any further satisfaction—Now do business.

#### EXHIBIT No. 399.

W. J. B., Wash., D. C.:

The “Government’s” prompt response noted, and while, as before stated, the writer will not disclose *her* identity, the “government” can depend upon assistance from a standpoint of vantage  
1076 that can never be attained by its officials. I have followed

Hyde’s methods for years, and he has received a monthly letter from me that I am satisfied has made his life miserable. He is at the present moment living in the belief that your officers are watching his every move, and that every man he has corrupted in Washington has, or is about to turn State evidence against him. I have tried to help you, but in my own way, and you are of course at liberty to follow or not the suggestions I offer.

CONVICTION is what we both want, although not from the same motive.

Two years ago Hyde employed a lawyer of this City named Henry Dimond, now at 530 California St., to act for him in many cases in Washington and elsewhere. He spent many months in Washington, with headquarters at Britton & Gray’s. From what I can learn he made a great success in the work, among other things a big land deal in Arizona with the Aztec Cattle Co., from which Hyde & Benson have cleaned up a \$100,000. I learn also that he is a close friend of A. B. Brown of the above named firm, who can probably give you full information concerning him. Very suddenly last spring just after his return from Washington, he severed his connection with Hyde. I have since learned that he became acquainted with Hyde’s methods while in Washington and declined to act further, giving as a reason failure on Hyde’s part to follow the course advised by B & G and himself to meet your suspension order. Neither Hyde or Benson have ever paid him for his services

in the land deal and as a consequence he cannot but have a bitter feeling, in fact told a friend he was going to sue them, when the news of Benson's arrest came.

1077 Now the key to the situation is this man Dimond, and if you can induce him to act with you, you can get a conviction. I have tried to work on him by a series of letters of which I enclose copies, because my fear was that he would have scruples in acting and these I have tried to meet on the assumption that Hyde was too smart a man to take an honest man fully in his confidence, as he would then be likely to leave him, and that what Dimond found out was obtained from outside sources. I have kept a watch on Hyde and the day Dimond received the next to the last of my letters H. rushed over to his office and remained there for an hour, (although they have hardly been on speaking terms) and when he left he had the appearance fear, disappointment and anger. Hyde went there in response to a note I sent him, and I assume Dimond refused to be employed.

If I were a man I could come out in the open and help you make the fight, but there are some matters a woman learns under circumstances that preclude an open fight, even though she may be deeply wronged.

I know that Hyde has been paying a man (or two) for years in the L. O. just as he pays Victor Wood at Sacramento. I had hoped to get you the names and particulars by this time, and I am equally sure Mr. D. knows all about it. If you fail to get him, publish personal to that effect, and I will spare neither time or money to help you. One of the men Hyde deals with is called "Jay" but that is not his name. I am now working to get you the names of the men in the local offices who are under his pay.

Remember I did not say I had a great amount of valuable information. I only said I would gladly respond to any question you might ask. As I ask nothing of the government, the government must be satisfied with what I am able to give.

TRUTH.

#### EXHIBIT No. 395.

Mr. D.

You told several friends of ours that you merely took charge of Hyde's legal and legislative business in Washington, and that you knew nothing of the work and affairs out here. You are now in no way connected with him. We of course know his bribery of clerks dates back of your employment but if you are no longer connected with him, you are, of course, free to take a case against him. The time has come, your name has gone before the secretary and you will probably soon receive a visit from a person representing the government. Listen to what he says and if you do not follow his advise you will make a grave mistake. Don't hesitate even to go to Washington, with Britton and Gray and your many friends it will be the making of you with the administration. You can give us the name of the party we want to forge the last link in the chain.

These letters have been for the purpose of educating you to an understanding of what you as an attorney can give us, and your official oath makes it your duty to expose crime while the treatment you have received at Hyde's hands binds you to nothing. Surely not to matters that came to your own knowledge in Washington.

Take thought before refusing.

1079

## EXHIBIT No. 396.

You see I was right, the picture man has squealed. Next comes V. and then we get closer to Hyde. You don't suppose we think that Benson really put up his own money or that Hyde did not know.

I am giving you these tips because we think you are O. K. and to prove I am on the inside.

Remember there is a call coming for you soon, and our advise is to go. The Secretary has asked Brown about your standing and you had best be frank. What is Hyde to you. he Will never give you a smell on any commission on that land deal. You know who the parties are he has been bribing all these years.

## EXHIBIT No. 397.

You see the pot is boiling. Hyde may think officials are fools, but they wil- have him yet. He thinks it is all a question of "dummys" which they can't prove, oh no; You was in Washington long enough to know better.

We are close after him and will nail him soon. If you will continue to keep mum you will see.

Benson first Hyde next.

There will be a nice lot of small sharks turn statu's evidence in Washington.

The picture man first then others.

Benson paid Hyde over \$25,000. profits on account of the land deal you handled and more coming. How much did they give you who made it possible for them to make the money.

1080

## EXHIBIT No. 398.

So you have had an interview. We hope you have made no mistake. No promise Hyde may make you will be kept.

Do not be foolish and refuse the call.

## EXHIBIT No. 401.

I have at last found out the name of the man who can convict Hyde.

J. J. BARNES, of the General Land Office has been in his monthly pay since 1897.

He has given Hyde advance information on all the State Indemnity Selections, has followed Hyde's instructions and taken up



clear lists as he wanted. He has written him the "news" regularly for years. You can force a confession from him if you press him.

Ask him where the money came from that paid for his house. Tell him you have one of his letters signed "J." HE WILL CONFESS. And so will Hyde if you send a "special" to him and tell him Barnes has made a clean confession of the whole thing.

Hyde is nearly crazy with fear. If you [stri]\* strike now you have him.

I will have the names of the local officers soon.

TRUTH.

081

*Exhibit No. 403.*

Now Mr. D. You have told several friends of ours that you "merely took charge of HYDE's legal and legislative business in Washington" and that you "knew nothing of the work and affairs out here and were now in no way connected with him." We of course know that his bribery of clerks dates way back of your employment, but we also know you were in his confidence and saw many of his *friends* while in Washington. If you are no longer connected with him you are, of course free to take a case against him.

The time has come your name is before the Secretary, and you will receive a visit from a person representing the Government in a day or two.

Listen to what he says, and if you do not follow his advice you will make a grave mistake. Every move you made last January was watched and you will have to explain your meeting with Valk. (I need not mention any other names) and prove by the stand you take you were not in the ring.

Don't wait for the Secretary to send for you, but go to Washington at once. In time to advise about Benson. You are all right, with Britton & Gray and your many friends behind you it will be the making of you with the administration. You can give us the name of the party we want to forge the last link in the chain. If you know a Mrs. Curtis here you will guess what we want. These letters have been for the purpose of educating you to an understanding of what you as an attorney can give us, and your official oath makes it your duty to expose a crime, while the treatment you have received at HYDE's hands binds you to nothing save legal secrecy, surely not the matters that came to your own knowledge while in Washington.

You will be offered \$2500. retainer and \$2500. more in case of conviction to assist Henny.

Take thought before refusing.

[\* Erased in copy.]



## EXHIBIT No. 405.

Mr. Henry Diamond.

We knew you would not be with Hyde only while he was accomplishing certain ends, and then you would be politely froze out. You was *duped* by a combination of HYDES.

We are wondering how long Boss Bailey, will be with Hyde before *he* finds him out. To every new Man Hyde is as sweet as honey right from the hive, just while he is using him for his jale-bird work, and he greases them all over with great expectations, then when he is through with them they find themselves suddenly *dropped* (froze out).

They also find Hyde very cunningly has their honor tied up in such an unlawful situation that they can't say one word against him, to openly expose his trickery meanness by them, without dangerously exposing themselves. This is an old sinch of Hydes, and every new Man tumbles right into his trap. We could give you the names of a dozen Men, he has tied up in the same fix, at the end of his having no more use for them. And you will notice Hyde, privately and *confidently* gives every last Man who has work for him a very black eye. If you keep your own counsels regard-  
1083 ing this letter, you will soon see for your-self, that he has not *one* friend among those who have worked for him, for he leaves them all in such a trickery manner they hate him. you get your experience with all the rest, in the end.

At first he is beautifully smooth to you and entertain you handsomely, until he has accomplished his ends and you will think you are the *one* Man of his life, until some day you [will]\* wake up to see the inside nature of F. A. Hyde, and find he has you tied hand and foot against saying one word against him.

Look out for Walter Bush he is Hydes sleeping Spy.

The letters from the defendant Dimond to A. B. Browne, referred to by the witness Shearman and other witnesses in the case, and the genuineness of which was proved or admitted, were also offered, and portions of the same were admitted as evidence in the case and read to the jury. The letters are dated February 20, 1903, April 28, 1903, July 22, 1903, and December 31, 1903. They were admitted in evidence as against the defendant Dimond only. The portions of said letters admitted in evidence are in the words and figures following:

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[\* Erased in copy.]

1084

## GOVERNMENT EXHIBIT No. 469.

*Letter, Dimond to Browne.*

Henry P. Dimond,  
Attorney at Law,  
415 Montgomery Street,  
San Francisco, Calif.

FEBRUARY 13, 1903.

MY DEAR BROWNE: You have, no doubt, been expecting to hear from me, and wondering why no letter or telegram has been sent; but when I arrived home one whole day late after a very hard trip, I found a state of affairs at Sacramento that made it necessary for me to instantly go there to fight through a bill of great importance that was in danger of being defeated, and I deemed it best to show my entire good faith by saving the day, even though I had to put off my talk. My bill passed the Senate yesterday, and I am satisfied I shall be able to pass it in the Assembly next week. On my return I at once had my talk, and first (as agreed) on the situation and procedure. This portion occupied all of two days. That is all I could get Hyde to give me. I had hard work to make him see things in their true and serious light, and he wanted to argue every point until I finally had to tell him that you so thoroughly agreed with me that unless the course I had laid out was followed, you absolutely declined to be retained in the matter. I should say here that I had in the meantime satisfied myself that such a course *could* be carried out and that I could clear up 80% of all his selections, and that he had gone as far as to have complete lists made. The final outcome was that he agreed to do this, and I then and there started the whole office, who as usual know all that is going on, to digging up San Francisco parties, and sent a man to Oregon who is now at work. Result, some twenty affidavits in two days.

As a consequence of his not appearing at the office I was unable to get at my personal matter until yesterday, but from various remarks made during our business talk and his delight at my success in Arizona and Sacramento I felt quite easy and reasonably satisfied that he would see the justice of my demand, which was made in accordance with the line of our talks: that the character of the work, my success, the interests at stake, justified a readjustment of compensation, to which I added the statement that I left him perfectly free to say so if he did not deem my services worth *to him* what I asked, as I had other plans for the future if he concluded he did not need me.

I have even had an interview with the "Departmental gentlemen" which will result in the greatest benefit to him, and in the few days I have been home I have put him so well over on the safe side of the danger line, that if I were permitted to work my plans out

to a conclusion I am willing to snap my fingers at anything the Department may do.

Faithfully,

(Signed)

HENRY P. DIMOND.

GOVERNMENT EXHIBIT No. 470.

*Letter, Dimond to Browne.*

Henry P. Dimond,  
Attorney at Law,  
415 Montgomery St., San Francisco.

FEBRUARY 20, 1903.

MY DEAR BROWNE: The "Inspectors" have left, and again  
1086 the conditions have changed, for they went away with *nothing* that can help the Government, and very much disgusted with the result of their investigations. The bill in Oregon failed but fortunately no one learned who was behind it, so no scandal will result therefrom as I had feared. As the situation now stands, I must withdraw my advice to let the business alone, so far as the standpoint of safety is concerned, and barring any other reasons, therefore, you can, I think, feel at liberty to accept any business that may be sent on.

Faithfully,

(Signed)

HENRY P. DIMOND.

GOVERNMENT EXHIBIT No. 476.

*Dimond to Britton and Gray.*

Henry P. Dimond,  
Attorney at Law,  
530 California St., San Francisco.

APRIL 28, 1903.

Messrs. Britton and Gray, Washington, D. C.

GENTLEMEN: Replying to your favor of April 22nd in the matter of the disposition of the notices coming to you from the Land Office where I have filed appearances in cases, and in which you say you will continue to forward same to me until I withdraw my appearance, I would suggest that the matter is one Mr. Hyde will have to arrange for with you.

I filed my appearance in hundreds of cases and a multitude of names; cases in which I now have neither the number nor the  
1087 name, and in which I have now no interest or sufficient data to enable me to file letters of withdrawal did I feel called upon to go to the labor and expense of so doing.

If Mr. Hyde cares to prepare the necessary letters I am ready to

sign them, but he has not appeared to entertain the same friendly feeling since I retired, in spite of every effort on my part to accommodate him, and I am not inclined to further trouble myself as to his affairs save where I can serve you.

It certainly is not worth while to send me the notices, and I think he should arrange with you on some fair basis to have them sent together with copies of the decisions.

Very truly,  
(Signed)

HENRY P. DIMOND.

GOVERNMENT EXHIBIT 479.

Dimond to Browne.

Henry P. Dimond,  
Attorney and Counselor at Law,  
530 California St., San Francisco.

JULY 22, 1903.

MY DEAR BROWNE: Your note of the 11th instant intended, I take it, as a reply to my letters of the 1st and 19th of June, has been received. I am, of course, more than glad that there was no other reason than therein stated for your delay in answering. I beg, therefore, you will give this letter your careful attention and do me the favor of telegraphing a reply.

I am satisfied you have not fully appreciated the gravity of 1088 the situation in which I have been placed, and I ask you to recall that it was on your counsel and advise, supplemented by unsolicited, voluntary and definite assurances of the financial assistance I could absolutely depend upon, which, with my personal knowledge of your resources and ability to carry out, coupled with my faith in the benefit that would accrue from the firm's co-operation, induced me to give up an assured income and permanent employment in risking a change I would not otherwise have been justified in making.

Sincerely,  
(Signed)

HENRY P. DIMOND.

GOVERNMENT EXHIBIT No. 482.

*Letter from Dimond to Browne.*

Henry P. Dimond,  
Attorney and Counselor at Law,  
530 California St., San Francisco.

DECEMBER 31, 1903.

Mr. A. B. Browne, Washington, D. C.

MY DEAR BROWNE: I have delayed answering your last letter because certain developments have occurred with such rapidity that

I waited to see how things were going to turn before giving you the facts.

Ever since I left Hyde I have been receiving anonymous letters denouncing him and telling me to wait and I would see the end. I paid no attention to them until their character was such that I was satisfied they emanated from some one fully acquainted with Hyde's affairs. Within the past week I have been impressed with the fact that they came from governmental sources.

1089 I herewith enclose copies of those that I consider important, and while their insinuations, so far as they concern my actions or possible connection with irregular methods are absurd and false and cause me not the slightest anxiety, yet whoever wrote them, has evidently command or fairly accurate knowledge of matters.

After thinking the matter over upon receipt of the letter purporting to disclose the writer's motive, I made up my mind that whatever else I concluded to do the time had come for me to press Hyde in the matter of the Seligman deal, from which Benson and he have cleaned up some \$75,000. to date. So I sent for him and read him the letters.

He was alarmed beyond measure and told me he had been receiving letters himself and some of his people likewise. I asked him what he had to suggest and his reply was typical:

"Of course, Dimond, I have such a high regard for your honor and integrity, I know you would never take a case against me, especially of this character, but I'll tell you what you can do that will help me greatly. When those officials call on you, make them think you are going to take the case, lead them on all you can and get all the information possible from them, then turn them down. You will help me very much and I shall be able to get ahead of them."

He ignored the matter of the Aztec and all the suggestions contained in the letters, and thought only how he could best serve himself. I let him go on to a point where he had laid bare his cold-blooded heart to me, and then I stopped him and I think that F. A.

Hyde never had as tough a half-hour in his life.

1090 I asked him why I was called upon to show him any consideration, what obligation I was under to him. That in one breath he had paid a tribute to my honor and integrity and in the next had coolly and selfishly asked me to sacrifice myself and stoop to a dishonorable action; that if his first statement was true, his request was a direct insult emanating from a guilty mind; that before he dared ask even a legitimate friendly act he should put himself right by according the compensation due me. This and much more, all of which he took. Then he offered me the case against Benson, saying he would pay me most liberally if I got back what he lost.

The interview ended by my telling him that so far as the case against him was concerned, I should be the judge of my own actions, but that before I considered anyone save myself, I proposed to be

paid for the service I had performed; that I had sent for him, first to see if he was disposed to be just, and, second, because however badly he had treated me, I felt it was but fair to notify him of the fact before I even considered the question of a case against him.

He left with an attempted dignity, saying I could do exactly as I saw fit about the case.

The Benson side of it can wait for the present and I will write you about it in a few days. I would like your opinion on the course I have pursued. Much as I need it, I cannot see how I could possibly take part in the government side of the case if offered. Of course I learned much in Washington, and putting this and that together I now know all there is to know. But I was employed by

these people at the time and my information concerns them. 1091 I did, however, feel justified in using this situation to force from Hyde what was my just due, and let him think what he pleased.

Faithfully,  
(Signed)

HENRY P. DIMOND.

This witness was then shown the papers in the record of California State Application No. 4248, in the name of Daniel W. Fulton, Post Office address, "c/o Peter Dean, 320 Sansome St., San Francisco" (involving lands in list B of the bill of particulars), and was asked to state whether he had examined the signatures Daniel W. Fulton on the papers, and if so, whether or not the same were genuine. He answered that he had examined the signatures, and he did not think both were written by the same person.

He was then shown the papers in the record of Oregon State Application No. 8664, in the name of D. O. Fulton (involving lands in list B of the bill of particulars), and was asked whether he had examined the signatures on the papers in that case—the application and the deed of assignment; and whether he had compared the same with the said signatures on the California case. He testified that he had examined them and had made the comparison; and further, that in his opinion one of the signatures in the California papers No. 4248 was written by the person who wrote two, at least, of the signatures in the Oregon papers No. 8664—D. O. Fulton papers—the two signatures, D. O. Fulton, on the application to purchase. (Photographs of the several signatures were introduced in evidence and exhibited to the jury.)

The witness then proceeded to point out the matters of similarity between the said signatures, Daniel W. Fulton and D. O. 1092 Fulton, which formed the ground of his opinion.

Witness was then shown the papers in Oregon State Application No. 6874, in the name of E. C. Douglas (involving lands in list B of the bill of particulars), and was asked to look at the two signatures appearing on the application to purchase and the signature on the deed of assignment, and to state whether he had examined the same, and if so, to point out any peculiarities he may have found as the result of his examination, which the witness proceeded to do in detail. Thereupon he stated that in his opinion

all three of the Douglas signatures were written by the same hand; and further, that in his opinion, all the Fulton signatures, both D. O. and Daniel W., except one, were written by the same hand, and that that hand was the same that wrote the E. C. Douglas signatures. My reasons for that belief are the reasons I have already assigned in pointing out the similarities and in showing the resemblance of these signatures.

This witness was then shown California State Application to purchase No. 2285, purporting to be signed by Elizabeth Dimond, embracing school lands described in count 26 of the indictment; also two deeds of relinquishment to the United States covering the same lands and purporting to be signed by Elizabeth Dimond; and also a number of other papers from the files of the General Land Office, and which had been there filed in connection with the several forest lien selections in the name of Elizabeth Dimond, referred to in said count 26 of the indictment, and all purporting to bear the signature of Elizabeth Dimond; and all of which had been introduced in evidence; and the witness stated that he had made a

1093 careful examination of all of said papers and also of a large number of papers which were in evidence and which counsel for the Government had proved, and counsel for the Defendants had admitted, bore the genuine signature or were in the handwriting of the defendant F. A. Hyde; and that he had carefully compared the said papers purporting to bear the signature of Elizabeth Dimond with the said papers proved and admitted to be signed by or in the handwriting of the defendant Hyde. And the witness stated that he was of opinion, as the result of his said examination and comparison, that the hand which wrote the papers so proved and admitted to be in the handwriting of the defendant Hyde, wrote all the said purporting signatures of the Elizabeth Dimond except three, and that said three purported signatures, including the one to the said application to purchase No. 2285, were each written by the same hand, but not by the hand that wrote the others; and he gave to the jury in detail his reasons for the opinion he expressed. The applications and other papers in the said cases of Daniel W. Fulton, D. O. Fulton, E. C. Douglas, and Elizabeth Dimond, bearing their purported signatures as aforesaid, were shown to have emanated from the office of the defendant F. A. Hyde. The said papers were thereupon introduced in evidence and exhibited to the jury.

This witness was then shown Exhibit 194, being a power of attorney to Thomas H. Burke, purporting to be signed by H. M. Morris, relating to lands involved in count 13 of the indictment, and proved to have emanated from the office of the defendant Hyde; and he

said that he had carefully examined the purported signature, 1094 H. M. Morris, and had compared the same with the handwriting of the other signatures testified to by him and that the signatures and handwriting on the exhibits proved by the Government and admitted by the defendant to be in the handwriting of the defendant Hyde, and that it was his opinion that the purported signature, H. M. Morris, was written by the same hand that wrote

the other signatures referred to (with the three exceptions aforesaid), and that wrote the said exhibits so proved and admitted to be in the handwriting of the defendant Hyde. And he proceeded to state in detail his reasons for the opinion he expressed.

This witness was then shown Oregon State Application to purchase No. 8585, in the name of Winnie Edwards, involving lands in count 23 of the indictment, and he testified that he had carefully examined the purported signatures, Winnie Edwards on the application, and that he found there a lead pencil tracing, in both places, that is, under both signatures.

He was then shown Oregon State Application to purchase No. —, in the name of Andrew Anderson, involving lands in count 15 of the indictment, and he stated that he had carefully examined the two signatures on the application, and that they were traced as the others were, that is, the same as the Winnie Edwards signatures.

He was then shown California State Application to purchase No. 6483, in the name of M. J. Matlock (lands in list B of the bill of particulars), and stated that he had examined the signature and found a lead pencil tracing just underneath the first loop of the "M", also at another point of the "M"; also a lead pencil line underneath a part of the other letter "M"; also lead pencil marks at other places. (examination being made through glasses.) It also shows that the fiber of the paper has been disturbed as if it had been rubbed with rubber, and besides there are certain other lines across it, such as might be made with a hard piece of rubber or bit of grit. Papers from Hyde's office.

He was then shown California State Application to purchase No. 2277, in the name of William Davis (involving lands in list B of the bill of particulars), papers from Hyde's office, and he stated he had examined the signature, William Davis, on the application to purchase and that there is a line or depression under the signature as if a lead pencil or some other writing instrument had passed over the paper before the signature was written, though he didn't see any evidence of an erasure.

This witness was then shown California State Applications to purchase No. 2469 and No. 2470, each purporting to be signed by C. P. Carpenter (involving lands in list B of the bill of particulars), and shown to have emanated from the office of the defendant Hyde. He was asked whether he had carefully examined the signatures, C. P. Carpenter to the applications, and he stated he had. He was then asked what conclusion he had come to with regard to them; and he answered:

"A. I am impressed with the strong probability that they are not fair signatures, because of certain variations and resemblances that are not apt to occur in fairly written signatures."

1096 "Q. I will ask you to explain to the jury why you state they are unfair signatures?"

To this question, counsel for the defendants and each of them objected on the ground that the papers are not yet in evidence.



"Mr. BAKER: They are referred to in the bill of particulars."

"The COURT: Are they papers that will be offered later?"

"Mr. BAKER: Yes." Your Honor will remember we offered certain affidavits of Mr. Schneider that came within the three years, and your Honor ruled them out until there was some evidence in regard to the original papers. These are the original papers; and our purpose is to show that these are what are known as traced signatures, and, therefore, are not genuine.

"Mr. WORTHINGTON: I do not see how that would make them competent, without something more.

"The COURT: I think I ruled out that testimony as to the affidavits of Schneider, because there was no evidence tending to show that the land involved in those cases had been obtained by fraudulent practices. That was the ruling I made then. Do you expect now to supply that link?

"Mr. BAKER: Yes; that is what we are offering to supply. We expect to have evidence that these signatures are traced.

"Mr. WORTHINGTON: If that is all the offer, I object to it.

"Mr. BAKER: Do you claim that a traced signature can be a genuine signature?

"Mr. WORTHINGTON: It is incompetent, unless you offer to connect the defendants with it, in some way.

1097 "The COURT: Do you expect to show that these are Hyde cases?

"Mr. BAKER: Yes; we will show that.

"The COURT: I think, with that evidence, it would be admissible. If they relate to those cases that are in the bill of particulars, and are cases of Mr. Hyde, I think that would be enough to make them admissible."

To this ruling of the Court, counsel for the defendants and each of them duly expected.

"Q. I will ask you to explain to the jury why you state they are unfair signatures?" A. The signature in application 2470 is the smaller capital "C", the first initial. So also is the capital letter "P". Notwithstanding the smaller scale of those letters, they are farther apart than the corresponding letters of the signature to application 2469; and, in both signatures, the word "Carpenter" is of the same length; that is, from the first stroke of the "C" up to the main part of the letter "r". I do not mean the tail of the "r"; but I mean the angle, or sharp turn of the "r" at the upper righthand corner. These positives——

By Mr. WORTHINGTON:

Q. Explain what you mean by "positives". I do not quite understand that. A. Very well. First there is a negative made, and the negative in this instance was of the two signatures simultaneously. They were in a frame together, and both were photographed at the same time. Now, from the negative thus made, a positive was made. That is, you place the negative in the camera and you put a sensitive plate and photograph with the light through the negative  
1098 onto the glass—onto a sensitive plat—again—with the result that what is dark in the original is light in the negative.

Now, if you photograph again you reverse that order, and what was light in the negative becomes dark in the positive. So, this is a positive, and where it was light in the negative it becomes dark. This is a reproduction, therefore, a facsimile, of the signature. These were originally upon one plate, like that (indicating). They were taken simultaneously and then the glass was cut, so that it might be used as I am now using it; that is, by putting one over the other.

Now I have them in a position in which the first "C's" are one above the other, and by that means I show the difference in the two signatures; that is, as to the distance between the "C" and the "P", and the "P" and the "C".

Now I bring these positives into one position, and by that means I show that the signatures are of the same length.

I wish to say with regard to these positives that they are not exactly the scale of these originals; but they are in exactly the same proportion. All dimensions are equally enlarged. I see that these positives are a trifle larger than the original signatures; but, having been made as they were, they are true in the particulars I have mentioned.

The COURT: They are true with reference to each other?

The WITNESS: They are true with reference to each other. There is no distortion at all in them.

Now I can fasten them in that position with a bit of gummed tape, if it is desired that I shall do so, so that an agreement of 1099 the signatures can be shown.

By Mr. BAKER:

Q. You had better do that.

(Thereupon, the witness fastens the glasses, as suggested.)

Q. What letters have you adjusted—the last name? A. The last name. The name "Carpenter."

Q. I will ask you, before I show it to the jury, how you account for the initials not corresponding with the name? A. Well, the relative—

Q. I mean the relative position of the signatures not being the same. A. That is something that is preserved in genuine and fair signatures with remarkable fidelity. For instance, if I am going to write my own name on a scale such as I am now indicating with my hand, the length of the letters, top to bottom, as related to the distance between the initials will, with remarkable fidelity, preserve a proportion. If I diminish the scale and write it on a scale which I am now indicating, which is perhaps not more than a fifth as large, the distance between the letters will be correspondingly diminished. That is, in genuine signatures, and fair signatures, there is a law of proportion.

At this point, counsel for the defendant Hyde asked, and was given leave to cross examine the witness as to the reasons for his opinion regarding the alleged unfairness of the two Carpenter signatures.

## Cross-examination.

By Mr. WORTHINGTON:

“Q. Your opinion, as I understand it, is that the two signatures which you have of C. P. Carpenter, were both traced from  
1100 the same original signature. Am I correct in that? A. I wish to say only this: I don't know whether from the same one or from two others that were alike, or that differed only slightly. This is all I say; That there is the coincidence of these signatures that I have explained. Now, how it comes about, I do not know. The chances are that it was done fraudulently, because it is a well-known fact that to write the same name twice in just the same length is a practical impossibility. That is to say, it is at least improbable, so highly improbable as to leave the impression that it was not done fairly; particularly when that fact is associated with the fact that the differences usually, are contrary to the rule in fair signatures, plus the fact that the connecting lines in this signature show hesitation. They are not strong lines. They are not smooth lines. They are not such lines as the average writer makes in running from one letter to the other when he is doing it fairly, in his own signature, unless he be a very old man, or an invalid.

Q. I understand your opinion, as given in your answer to the District Attorney, to be that these two signatures were not copied from the same original; but they were traced. Did you not say that? A. Well, if I did use that expression, I used the word traced as being the probable manner of their construction.

Mr. BAKER: In Justice to the witness, I might say I am the one that used the word “traced.”

The COURT: That is true. I think that Mr. Baker, in stating his offer, offered to show that they were traced. I do not think the witness said that.

1101 Mr. WORTHINGTON: I would have been saved a lot of trouble if I had understood that.

By Mr. WORTHINGTON:

Q. I will ask you now, do you say from the appearance of those writings that anybody can form a reasonably safe conclusion that those two signatures were traced, instead of being imitated, merely? A. I think it very probable that they were traced. I only care to go to the extent of saying that these things that I have mentioned lead me to an opinion and strong impression that they were fraudulently made. That is all—that they were fabricated signatures.

Q. That does not answer my question directly. I want to know whether you will say from the appearance of those signatures, and using your expert knowledge in these matters, you are able to reach an opinion that is reasonably satisfactory to yourself that they were traced? A. No; I would not say that they were traced.

Q. Your opinion is, however, that whoever wrote them had a form or forms of that signature before him—that they were imitated? A. Yes; I think that is true.

Q. Do you say that these two signatures are such as that Mr.

Carpenter, supposing there be a person of that name, might not have written them both? A. I would say that is highly improbable.

Q. Now, I wish you would tell us just why you say it is highly improbable that the original Mr. Carpenter wrote them both.  
1102 A. Because the original Mr. Carpenter, had there been one, would have adhered more closely to the matter of proportion in the construction of the initials of his name, first.

In the second place, the original Mr. Carpenter—it is so improbable that he would twice write his name so nearly exactly the same length that I do not believe that it was the original Mr. Carpenter. On the other hand, I believe that they were in some manner written from an exemplar or exemplars that were alike."

"Mr. WORTHINGTON: I object to this going to the jury at this time, until there is something to connect Mr. Hyde with this alleged reproduction of a signature, or connect some defendant with it.

"The COURT: I think it will stand like the alleged fraudulent practices in Oregon, for instance, where there was no direct evidence at the time that Mr. Hyde knew of it. We discussed that matter before. The jury will have to find of course, eventually, in order to make it evidence against any defendant, that he had notice of it." The papers were thereupon offered in evidence.

To the ruling of the Court allowing said two papers purporting to be signed by C. P. Carpenter be offered in evidence the defendants and each of them duly excepted.

Further redirect examination.

By Mr. BAKER:

This witness was then shown Government Exhibit 490, referred to and identified by the witness William E. Valk as having been sent to the General Land Office, and he stated that he had examined the same and had made a comparison of this Exhibit 490, with certain letters from Benson to Dimond already introduced in evidence;  
1103 he stated it to be his opinion that the Exhibit 490 was written on the same typewriter as Exhibit 418—a letter signed "John A. Benson", addressed to Mr. Henry P. Dimond, and dated September 12, 1901; and Exhibit 423—a letter signed "John A. Benson", addressed to Mr. Henry P. Dimond, and dated December 12, 1901; and Exhibit 435—a letter signed "John A. Benson", addressed to Mr. Henry P. Dimond, and dated April 11, 1902. He then stated his reasons in detail for his opinion.

Thereupon, counsel for the Government introduced in evidence said Exhibit 490, the same being a memorandum of forest lieu selections pending in the General Land Office, some in the name of F. A. Hyde, some in the name of F. A. Hyde & Co., some in the name of C. W. Clarke, and some in the name of Isaac Liebes; and most of which involve lands mentioned either in the indictment or in the bill of particulars in this case.

In connection with said Exhibit 490, counsel for the Government also introduced in evidence a letter of October 10, 1901, addressed to Hon. John H. Mitchell, United States Senate, by the Commissioner

of the General Land Office, which letter was proved to have been prepared for the Commissioner by the witness William E. Valk,—the same being a report upon the status of the said forest lieu selections mentioned in the said Exhibit 490.

The said Exhibits 418, 423 and 435, with which the Exhibit 490 was compared by the witness Shearman, were letters written by the defendant Benson to the defendant Dimond, which letters were proved to be genuine and introduced in evidence in connection with the Aztec deal by defendants Hyde and Benson.

1104

Cross-examination.

By Mr. WORTHINGTON:

There are two ways of tracing a signature—one by placing the paper upon which the reproduction is to be made over the paper to be copied. The other is by tracing first with lead, superimposing as before and making the tracing lightly with a lead pencil and then writing it over with ink, and then erasing the lead. I have not examined these signatures with regard to whether there have been any pencil writings there rubbed out. In talking about tracings, it would be very important to have that matter determined. I will make an effort to do it now—the light is very poor in here. (Here the witness took the papers to a window in the court room and examined them).

I do not find any evidence of lead pencil marks or of erasure. If these signatures were done by first tracing with lead pencil and afterwards rubbing out the lead, it was an exceedingly scientific job, and the fact that I can discover no trace of the lead there with my glass, I should say, is an indication that the tracing was not done in that way. If it was not done in that way, it must have been done in the other way by laying the paper over the writing to be traced and writing for the first time with ink. Of course, when that is done, the object is to get the light through the paper, and in order to do that one could go to a window and hold it up in that way one above the other (illustrating). To do it that way you would have to go to a window and put it up against the window. It would be a very awkward way to do it, by having it down on the table. Of course, the way to do that is to take a couple of objects that  
1105 will support a glass, cover this glass with black paper except a slit in the black paper of perhaps an inch wide, and a couple of inches long, put an electric globe under the glass and then the signature to be copied over the slit and if it is at night, so that there is no daylight to obscure or hinder the light from the globe coming through, and being the only light that come to the eye, why, you get a very clear outline, of course, depending upon the character of the paper, its thickness and whether or not it really allows light to pass through, which, of course, would affect the result. I do not say anything about whether, supposing my judgment about it to be correct, whoever did this tracing must have had an outfit essentially like that which I have described. There may be other ways. I could take this paper—application 2236—and could trace any word in

it through the paper in the way I have described—not necessarily with the apparatus I have described but with any other apparatus that accomplishes the same result; the best way would be to have a transparent table to put the paper on and a light under it. I do not recall any other way at the present time.

As to whether it would be possible to put that perpendicularly up against a window and write, the difficulty then would be that the ink would flow away from the nib of the pen—you could not do that very well—I do not know how you could get along without getting the light through the two papers; any practical device for the accomplishment of that purpose would serve your purpose.

1106

*Charles A. Bump.*

Direct examination.

By Mr. BAKER:

At present in the mercantile business. From January, 1895, to September, 1902, I was clerk in the State Surveyor General's Office at Sacramento.

I wrote the approvals and put the applications that were filed on record. There was a daily dairy kept that showed the filing, receipt, and to whom the approval was sent. I kept the daily dairy most of the time, unless I was absent on vacation, or sick.

After the application was placed of record, the number, the name of the district, the name of the applicant and to whom the receipt was sent, was written by me in this dairy, after I put the application on record. When the application was approved, it was recorded in this book to whom the approval was sent; and this was recorded in this book after I had written the approval and it had been signed by the Surveyor General ready to go out.

This book, "Daily Journal, 1902" is the book I refer to.

Taking application 2826, filed September 13, 1902, I will illustrate what we would do: The application was looked up by the deputy and handed to me to place on record. It was then put on what I believe was called the Register of entries. I then wrote the receipt and recorded in this book (indicating the Daily Diary) to whom it was sent. While I was there I placed the receipt in the envelope and addressed the envelope. The boy generally sealed it and took it to the office.

1107 If an application was brought to the office in person it would come to me from the deputy of the office to place on record. I would then hand the party who filed the application a receipt and write on here (indicating Diary Book) the number of the location, the name of the district, the name of the applicant and to whoever presented it in person, and hand him the receipt.

If the receipt was mailed instead of given to the person who brought it, I would record here to whom it was mailed.

Looking at application 2826—Date on the book September 13, 1902—the filing receipt was mailed to John A. Benson. The name in this case is Gertrude Harrison, Oakland, Alameda County.

I can state absolutely nothing from memory about these matters. I only know what this book shows. The item referred to, application 2826, is in my handwriting, and made at the time.

(The application No. 2826, in the name of Gertrude Harrison, referred to by the witness, is in list C of the bill of particulars.)

#### Cross-examination.

By Mr. CAMPBELL:

I could not say whether Benson filed that application in proper person. The receipt was sent to him because I put his name there, showing to whom I sent the receipt. There was something, perhaps, with the application that indicated that I should send it to him.

1108 (The application is exhibited to the witness, but, after examination, he can find nothing on it to indicate that the receipt should be sent to Benson.)

There is nothing here (On the application). It may have been presented to me in his envelope, or the deputy who filed the application may have told me to send the receipt to Benson. There was something to indicate to whom I should send the receipt, or I was told by the deputy I could not say whether I was told by the deputy. If an application came to the office in the envelope of John A. Benson, I might have put Benson's name there, or if the person who filed it told me to send the receipt to Benson.

If John D. Ackerman brought this application of Gertrude Harrison into the office and filed it, and told me to send the filing receipt to Benson, then Benson's name would appear here, if I sent it to him. If there was something to indicate who to send it to, I would send it to that person. Of course, if a stranger came in and said, "Send this to John A. Benson," I would not do it unless there was something to show that it should go to Benson. I do not know what there was in this particular case 2826 to indicate that the receipt should go to Benson. Don't know who told me to send it to him. I know there was some authority for me to do it and to send the receipt to Benson. That is all I know.

I could not tell in this particular case, nor in any case, who directed me to put the name there. That is, John A. Benson, 507 Montgomery street.

I cannot say whether, in a single entry that I made in this 1109 book, John A. Benson ever told me to put his name there. I have no recollection that Mr. Hyde ever told me to put his name in the book. As I stated before, there was something which indicated with the application to whom to send the receipt, or the deputy might have told me.

I have looked at many of the papers since I came to Washington, and I do not recollect of seeing any application which would indicate to whom the filing should be sent.

In this other record I have been speaking of, when an application comes in the deputy or the Surveyor General himself looks up the land and decides whether or not to file the application. He

hands it to me to file—to place on the record—my recollection is that I first put it on the Register of Entries, as I believe the book is called. I then wrote the receipt recorded here. Then I got the information from him, as I stated before, as to whom to send the receipt, or perhaps from the envelope if it was handed to me, or from a paper, a letter, with the application. Then I wrote the receipt, enclosed it in an envelope and it was laid on my desk until it was mailed. Then later on the application, if it was a lieu application, would be put on the plat book later in the day, and on what was called the lieu book, and then placed on file.

Personally, I did not receive any of the applications. That was not part of my business. The information I got was from the Deputy or the Surveyor General, or something with the application that indicated to whom the receipt should go—that is, indicated to me.

All I can say about this book is (meaning the Daily Diary) that I put down the information which someone else gave me, or which I inferred from an envelope or letter.

1110 I have no recollection that after I made this particular entry of Gertrude Harrison that I found out that I made a mistake, and that it belonged to a land attorney named C. L. Hovey. I have no recollection, during the time I was there, of any errors in any particular case. Such a thing might have occurred.

Frank E. Wright was the deputy in 1902. His desk was adjoining mine. I occupied my desk most of the time. I would pay no attention to what was going on at Mr. Whight's desk, that I remember.

I don't know which would happen oftener—whether the deputy Wright would tell me verbally to whom to send the filing receipt, or whether I would infer that from something with the application.

I think there were more applications that came by mail than in person. There was usually a letter with them, and that letter should be filed with the application. If this particular application came with a letter from John A. Benson, or his office, that letter ought to be with the papers. I cannot say that any of them came simply in an envelope without any letter. They might have come that way. The mail did not come to my desk. It came to the deputy's desk and then I don't know anything about it.

#### Cross-examination.

By Mr. WORTHINGTON:

If any writing came with the application showing to whom the receipt was to be sent, that would not necessarily come over to my desk with the application. It might have been taken out. There 1111 might have been something else besides the writing referred to. In the other cases where no writing came, all I know is that either the deputy told me or there was something with the application that indicated—a letter or an envelope, with a business card on it, to whom to send the receipt.

If an application came by mail just enclosed in an envelope with a business card on it, quite often it was put right in the application



and handed to me by the deputy. After I got through with the envelope, I would put in in the waste-basket. There is nothing in this book to show, and I have no recollection as to whether that did happen in this case. I only know what the book shows. In a case in which there was nothing with the application to show to whom the receipt should be sent, I would have no information as to whom to send the receipt, except what the deputy would tell me; and I don't know where — got his information.

By the COURT:

I think perhaps it did happen while I was there that a receipt which had been sent out came back to the office as having been sent to the wrong person. This may have occurred a time or two.

“Q. When that did happen what was done about your record, if anything? A. I should say that the record would show that the receipt was returned, and who it was forwarded to afterwards, when it was returned. The record should show that. That would be my natural way of doing it.

While I was there in the office this book was kept for purpose, and the record was made, to show the person to whom the receipt was in fact sent, regardless of whoever directed it to be sent, and it would show if it was handed to anyone or sent by mail, and to whom it was, in fact, handed, if it was handed to anybody. I don't know anything about the keeping of the record except during the time I was in my office, and that was from January, 1895 until September 25, 1902.

By Mr. WORTHINGTON:

I have no recollection about altering the record in the instance where the receipt came back. Too far back for me to recollect. The receipt that was returned would not come to me, but would go to the Surveyor General; but the chances are that it would be turned over to me, and if I had made any error, no doubt would correct the error in my book.

During the years I was there this book was used by way of reference. We referred to it to show to whom the receipts were sent, whose application it was and to whom the approval was sent. It was relied on in that way in the office. There is no other record of the person to whom the receipt was sent, and no other attempt made to keep such a record.

By Mr. BAKER:

No other record to show to whom the notice of the approval of the application was sent. This record was open to inspection by the public. As a matter of fact, not very often used. It was in my desk, but if anybody called for it, they were at liberty to see it.

By Mr. WORTHINGTON:

When a single application was handed to me by the deputy, I would not at once write it down in this book. As I stated before, it was first recorded on the Register—I believe the

book is called the Register of Entries. Then the receipt was written, my recollection is, and that it was recorded in this book to whom it was sent; but as each application was filed it was put in this book. That is the way I kept it.

By the COURT (with the book before him) :

"Q. What do the letters indicate, following the number 2826? A. The land district.

"Q. What is the land district there? A. 'Sac.'—Sacramento.

"Q. I understand this bracket to indicate that the whole list was sent to him, to save the repetition of his name? A. All within the bracket.

"The COURT: Well, that may be received, and an exception noted."

To this ruling of the court counsel for the defendant and each of them duly excepted.

Thereupon, counsel for the Government offered in evidence certain entries in said book, a list of which was prepared by the witness for convenience of reference, the correctness of which list was not disputed by counsel for the defendants.

This list showed that between August 16, 1897, and November 4, 1902, a large number of applications to purchase school lands in forest reserves in California were filed by the defendant Benson or his clerk Lavinson, and that in many of the same cases the 1114 certificates of approval were sent to the defendant Hyde by the State Land Office.

Counsel for the defendants and each of them objected to the introduction of the list in evidence solely on the ground that the entries in question related to lands not referred to either in the indictment on trial or in the bill of particulars filed in the case.

To this, counsel for the Government replied: We offer this to show that the defendants Hyde and Benson were acting together, just the same as we could show it by letters. In other words, we offer to show that during the period mentioned, numerous certificates of approval were sent to the defendant Hyde, and that these approvals consisted of cases where the defendant Benson or his clerk Lavinson had received the filing receipts. We offer this for the purpose of showing that certain applications were approved and the certificates of approval sent to F. A. Hyde; and that among those applications where the filing receipts had been sent to Benson, or delivered to Lavinson. This irrespective of the fact as to whether these particular lands were obtained honestly or dishonestly.

Thereupon, the Court ruled as follows:

"The COURT: You have a right to show the relation of the parties, of course. I do not think there would be an inference that it was not perfectly honest, claimed. The purpose is to show that they were acting together when you claim they were acting together. I think it is admissible for that purpose. I do not think the bill of particulars has anything to do with it, or the order for the bill of particulars, any more than any other evidence tending to 1115 show what the relations between them were. The language of the order is: "Bill of particulars in which he shall give

a full description of all the parcels of school land, as to which the United States expects to offer evidence at the trial of the case, that they were wrongfully obtained from the State of California or the State of Oregon," etc. This is not offered for any such purpose as to those lands. The jury, of course, will have to understand that as to this there is no question, as to whether these were honestly or dishonestly obtained; but simply to show whatever it may show as to the relations between Hyde and Benson."

(To this ruling of the court counsel for the defendants and each of them duly excepted.)

(It appears from said list, Exhibit 536, that some of the lands herein mentioned are also mentioned in the indictment or in the bill of particulars; but others are not.)

Thereupon, the counsel for the Government offered in evidence the list referred to, from which it appeared that during the period mentioned, in a large number of cases, applications for school lands in California were filed in the California State Land Office by the defendant Benson or his clerk, and that the approvals in many of said cases were sent to the defendant Hyde.

#### Cross-examination.

By Mr. WORTHINGTON:

I have not refused to have any conversation with counsel for defendants, although I have not consulted with them. I was asked to confer with them, and I have not done so.

In not talking to counsel for the defendants, I was 1116 actuated by my own notions of propriety in the matter, and also I was instructed by Mr. Baker that I should not talk with any outsiders. When I received your letter I was told by him not to talk to counsel for defendants, but to wait until I had testified. I don't know that I considered that binding upon me; I don't know that he said I should not, but that he would rather I would not. It was not my intention to talk to you anyway. I talked to Mr. Baker freely about these books—in his office an hour or so.

*Witness Henry E. O'Neill.*

By Mr. BAKER:

I am a merchant and reside at Tacoma, Washington. Was employed in the State Land Office at Sacramento, California, from about the middle of April, 1898, until the first of January, 1901. I was the correspondent; and at the times of the vacations each year of Mr. Bump, the filing clerk, I assumed his duties while he was away. I followed the plan or custom of Mr. Bump in keeping the Daily Diaries. That is to say, the last act before mailing the receipt, was an entry made in the Diary showing the number of locations, the land district, the name of the applicant, and the name of the attorney to whom the receipt was sent. The receipt was always sent as shown by the Diary. That is, if sent to the applicant, it was so shown. If sent to the attorney for the applicant,

it would so appear and if the person to whom delivered was present it would be marked "Delivered in person"—as I remember it.

1117

*Witness Bruce L. Dray.*

By Mr. BAKER:

I am Searcher of Records; and reside at Sacramento, California. Was employed in the State Land Office at Sacramento from January 1901, to part of March 1902, I think. Am familiar with the book called the Daily Journal or Daily Diary. It was kept as a part of the records. Entries were made in it as we were about to send out receipts or approvals. The record was made after an application was filed. It was about the last record that was made. We made it every time we sent one out. I assisted in part of the work of making up the list, Exhibit 536, showing certain files of cases in the California State Land Office. Where my name appears on the list it signifies that I filed the applications, or approved the locations, or sent the filing receipts out on the dates named. Where my name appears on the list, it appears in the same connection also in the book—the Journal or Diary.

Counsel for the Government thereupon introduced in evidence, in connection with the testimony of the witnesses Charles A. Bump, Henry E. O'Neill, and Bruce L. Dray, the records of the California State Land Office and the entries in the Diaries referred to, wherever such records and entries refer to the cases contained in the list, Exhibit 536, and not otherwise.

Cross-examination.

By Mr. WORTHINGTON:

Q. Did you ever have any filing receipts returned to you at all by any one as having been sent out erroneously?

1118 A. Yes, sir; but I have no recollection of any particular case.

*Lewis E. Aubury.*

Direct examination.

By Mr. BAKER:

I reside in San Francisco. Have been State Mineralogist of California since April 1901. I know the defendants Hyde and Benson, and met the defendant Henry P. Dimond on or about December 14, 1902, as near as I can recall. Mr. Hyde was with him at the time; and the meeting occurred at my office, at the State Mining Bureau in the Ferry Building, in the City of San Francisco.

At that time Mr. Hyde and Mr. Dimond called on me, in the morning. Mr. Hyde said: "Mr. Aubury, you have been doing some very good work in Northern California in exposing the methods of the timber thieves, and protecting the mineral lands of Northern California. Now, there is a portion of California, that you seem to have overlooked, and that is the deserts of Southern California, which are rich in minerals, which you probably know." He said:

"On these deserts are certain deposits of soda, salt and borax, and these are found in the dry or ancient lake beds. It appears that when the lands were originally surveyed that these lands were classified as agricultural." Now, he said, "If it were possible for the Commissioner of the General Land Office to declare these lands mineral in character, you would be saving a very large territory for the miners of California." I told him that I was rather fa-

1119 miliar with some of those lakes and some of those deposits; that I didn't know how they had been entered, whether they had been entered as agricultural lands or as mineral lands; but surely if they had been entered as agricultural lands and they were mineral in character, they should be so declared by the Commissioner. Mr. Hyde stated that Mr. Dimond was associated with him as counsel at the time. He said: "I am to a certain extent interested in this slightly, and I can furnish you with a description, maps and data pertaining to all these ancient lakes, and if you will take the matter up with the Commissioner of the General Land Office I will be glad to have you do so." He said the California Miners' Association had passed certain resolutions recommending to the Commissioner of the General Land Office, the Secretary of the Interior, and also to our representatives in Congress, that they endeavor to have such lands classified as mineral or saline in character. I told him I would look into the matter if he would furnish me the data, and I would place the matter before the Board of Trustees; that I didn't wish to take the responsibility of a matter of that kind myself without consulting with the Board. On December 16, Mr. Dimond wrote me a letter and enclosed with the letter a certified copy of the resolutions of the California Miners' Association bearing on this subject, and signed by Edward H. Benjamin, Secretary. The letter and the resolutions I turned over to Mr. Francis J. Heney of San Francisco. The resolutions were subsequently published.

The witness was then shown a book entitled: "California Miners' Association 1902," and was asked to look at the same and

1120 state whether the resolutions referred to appeared therein.

He answered: Yes, sir; these are identical with the resolutions which Mr. Dimond furnished me a copy of. I answered Mr. Dimond's letter and told him the matter would be referred to the Board of Trustees of the State Mining Bureau.

Subsequently I had a conversation over the telephone with Mr. Dimond on one or two occasions. The same day or the day after he wrote to me, he asked me if I didn't receive the maps and data. I told him I had received them. I had at first told Messrs. Hyde and Dimond that there would be a meeting of the Board of Trustees of the State Mining Bureau, in a few days, and the matter would be presented to them; but the Board did not meet. There was a meeting set for the 10th of January, 1903, and I had no further conversations with Mr. Dimond, although he called me up two or three times and asked me if anything had been done by the Board; but the Board not having met, I advised him that his matter could not be brought up.

By Mr. BAKER:

"Q. Well, how about conversations with Mr. Hyde?

"Mr. WORTHINGTON: I object to conversations with Mr. Hyde and Mr. Dimond. This testimony, as I was informed by the District Attorney, was offered for the purpose of endeavoring to connect Dimond with the anonymous letters. There is something in one of the letters about salt lands. So far as that is concerned, it is competent under your Honor's ruling as to the conversations with Hyde; but I do not see how that would help us about Dimond's connection with the anonymous letters.

1121 "Mr. BAKER: I want to show that this witness had a conversation with the defendant Mr. Hyde, about the time that the anonymous letters were written, in which Mr. Hyde took up that question of saline lands and salt lands, and in which Mr. Hyde made him an offer, which was a bribe; and I offer that testimony because in the anonymous letters there is a statement that he had better watch his work, for H. is planning a grab that will have a salt flavor this time".

(The statement referred to appears in one of the anonymous letters received by the Secretary of the Interior, the last of December 1903, and is as follows: "In justice to yourself and your office push this with some intel-egence and save a little of the public lands. Can there be so much smoke without some fire? Poor old Boss Baily is now sent on to pull the wool over your eyes. He at least is innocent, and like the rest will quit or get fired when he is of no more use. Better watch his work though for H. is planning a new grab that will have a 'salt' flavor this time.")

"Mr. WORTHINGTON: If the Government intends to show that the conversation to which Mr. Baker refers was communicated to Mr. Dimond, of course——

"The COURT: The witness has already stated that Mr. Hyde told him that Mr. Dimond was associated with him as counsel in the matter. There would be that.

"Mr. WORTHINGTON: Yes; I have conceded that up to this point everything testified to by the witness is competent in that direction; but I object to any testimony about a conversation between the witness and Mr. Hyde, in reference to this salt land business."

1122 (After further extended discussion, not in the presence of the jury, the Court declined to allow the offered testimony as to any conversations between the witness and the defendant Hyde, unless in the presence or within the knowledge of the defendant Dimond.)

By Mr. BAKER:

"Q. Were you familiar with the character of these lands that Mr. Hyde talked to you about? A. Well, I will say that I was generally familiar with all the desert Playa Lakes, and saline deposits of the deserts of Southern California.

"Q. Did or did not you make an examination of them for the purpose of presenting the matter to the Board of Trustees? A. I did.

"Mr. WORTHINGTON: I object.

"The COURT: He has answered the question. He said he did.

"By Mr. BAKER:

"Q. The question is what examination did you make?

"The COURT: What is the importance of that?

"Mr. BAKER: If your Honor please, we want to show that these lands were not saline lands, and that they were absolutely worthless commercially.

"The COURT: That is all right.

"Mr. WORTHINGTON: I object to that unless it is the result of his investigation and knowledge, communicated to Mr. Dimond.

"The COURT: An exception will be noted. I think it is admissible.

1123 To which ruling of the Court the counsel for the defendants and each of them duly excepted.

"The WITNESS: After receiving the map and the other papers which were sent to me by Mr. Dimond, I examined the records of the Bureau, and also the notes which I had made of different Playa Lakes, of saline deposits of the desert; and I also turned all of these papers over to Horace Stevens, who at that time was a field assistant, working under my direction. I have not made an examination of the character of the land after I received the maps and the papers but I had known all the lakes a few years previous to the time when the papers were submitted.

"Q. Tell us the character of the land. A. The character of the land in question—

"Mr. WORTHINGTON: I object to the examination.

"The COURT: It is as to the same point, I understand. The exception will be noted. You may say whether they were or were not saline lands, that is all.

To which ruling of the Court counsel for the defendants and each of them duly excepted.

"The WITNESS: They were not what I would term saline lands. While they contained small percentages of salines, in the shape of salt, and a small percentage of soda, it would have been a matter of impossibility to have ever worked those lands commercially, for the saline contents.

"Q. What were the lands worth for agricultural purposes? A. They were absolutely worthless.

"Q. What were they worth commercially? I want to find out if they were of any value for any commercial purposes."

1124 "A. I would not consider them of any practical value for either agricultural or mineral purposes.

The witness further testified that at a meeting of the Board of Trustees of the State Mining Bureau held in the latter part of January, 1903, the Board decided that it could not take up the matter and that the witness, by letter dated January 30, 1903, so informed the defendant Dimond.

*Louis F. Geisler.*

By Mr. PUGH:

Reside in Philadelphia. In 1897, 1898 and 1899 resided in California—in San Francisco, where I was in music business, selling pianos, organs, etc. Associated with the firm of Sherman, Clay & Company. Mr. Sherman was Mr. Hyde's brother-in-law.

I know Hyde. Don't remember the exact date; but ten or twelve years ago Hyde spoke to me personally of purchasing some land, which I was agreeable to, stating the land was cheap and that it would undoubtedly enhance in value. I knew Mr. Hyde as a respectable, reputable real estate man, and left all the details to him. I did not question his ideas or views on the matter at all, in view of our very long acquaintance.

I agreed to buy the land and signed some papers to that effect, and made some payment on it. Cannot remember the details. Haven't thought of the matter for ten or twelve years. The transaction was annulled, I think, some few months after it was entered into. Cannot remember what papers I signed, nor whether I made an affidavit. Have not followed the matter. Recollection 1125 very imperfect. Cannot remember whether I went before a notary public.

I remember going to Mr. Hyde's office when I wished to annul the matter; and I received the payment which Mr. Hyde had assured me that he would return to me, if I wished to get it; and whether I saw the notary at his office at that time or not, I could not say. I don't remember where I signed the papers. I had the only conversation with Mr. Hyde regarding the matter in my own office. I remember that distinctly; but I cannot remember whether I signed the papers there or not, and cannot tell you who sent them to me to be signed. After I signed them, I think I kept them until I reassigned them or returned them to Mr. Hyde some months afterwards.

Witness was then shown application No. 2245, in the name of Louis A. Geisley, filed August 7, 1897, embracing lands in count 4 of the indictment, and was asked to examine the same and state whether his signature appears on the application. He answered: yes, sir; that is my signature. I do not know E. H. Thorp, the notary whose official signature appears on the application, and I could not state from recollection whether I ever went before Mr. Thorp to swear to the affidavit. I don't remember that I knew anything about whether the land was occupied at the time, unless I got it from Mr. Hyde. I did not know of my own knowledge; or as to whether it was suitable for cultivation.

Some months afterwards I went to Mr. Hyde, in accordance with his promise, and asked him to release me from it and annul the transaction; that I had decided I didn't think it was proper 1126 for me to indulge in land speculation. Mr. Hyde had told me that he guaranteed me in the transaction; that he would return me the money, or take it off my hands, or something of that



sort; something that induced me to call upon him to redeem his promise. I asked him to redeem his promise; which he promptly did. He paid me the money I had paid him in the transaction. I signed some papers in connection with it, annulled it, or assigned it, or something of that sort. I cannot remember any power of attorney executed by me.

Witness was then shown a paper dated July 14, 1897, purporting to be a power of attorney to F. A. Hyde; and he stated that his signature appears on the paper. I do not remember having gone before any notary; or whether I signed that paper at the same time I signed the application. I do not remember what sort of paper I signed when I went to Mr. Hyde's office. Witness was then shown paper dated June 20, 1898, purporting to be a deed of assignment to Mr. Hyde; and he stated that his signature appears thereon. I do not think I know Henry P. Tricou the notary, though the name is familiar. I don't remember ever having appeared before him to acknowledge that paper.

The application, and record accompanying the same, were then introduced in evidence as relating to lands described in count 4 of the indictment.

#### Cross-examination.

By Mr. WORTHINGTON:

I don't remember any one talking to me about this transaction from the time it occurred until this morning. The matter  
1127 had gone out of my mind. I talked with some one in the District Attorney's Office before going on the stand. That was the first time it had been brought to my attention. I have no recollection about the details of the transaction, any more than I have stated.

I imagine that Mr. Hyde told me I had a right to take up school lands and that I might do it and make some money out of it. Cannot recollect what he said to me in the first conversation, but I signed some papers and put up some money. Can't recollect about the notaries.

Anything that Mr. Hyde said to me, at that time or at this time, I would have had so much confidence in him that I would have gone on, and imagined it was all correct. When I signed the papers, I gave him \$150.00 or \$200.00, something like that, to use in buying the land.

Witness is shown the certificate of purchase and says he imagines he might have kept this and handed it back to Mr. Hyde when Hyde refunded the money to him. When I went back to him I signed something which I understood to be an annulment or an assignment, or something of that kind.

I cannot swear that I surrendered any papers at the time. I only remember signing some documents annulling the transaction.

When I went back to him I understood that I was transferring whatever interest I had over to him, or was annulling the transaction. I think it was an assignment. I imagine it would be. This assign-

ment reading that Hyde had paid me \$208.00 for my interest in the land represents my interest in the transaction so far as I am concerned. That closed it.

1128 When I went into this transaction originally, Hyde told me that if I was dissatisfied he would take it off my hands. I went to him afterwards to keep that promise and he promptly did it. He gave my back my money. I signed some papers, and since then the matter has not been in my mind until to day. When I signed the papers originally, I relied on Hyde's statement as to the adverse occupation of the land, and so on. I could not swear that I did read the papers.

*William Oliver Randolph.*

Resided in Los Angeles, California. Lived there part of the time for 20 years. In 1898 lived in Portland, Oregon. Was then married.

"Q. What was your wife's name? A. Mary E. Randolph; I think it was Mary E.—Mary Randolph, anyhow.

"Q. What relation, if any was Pearle Randolph to you—— A. Pearle, that was it. I have been divorced for a good many years, and I had forgotten her name. Pearle.

"Q. What was your wife's name, then; Pearle? A. Pearle B. Randolph."

I met the defendant Schneider in Portland at that time. Met him in a casual sort of way. I was in the wholesale fruit business. Don't know exactly when it was. It was eight or nine years ago. Schneider came to my house one day and asked me if I had ever taken up any land. I told him I had not. He said I was entitled to. He said, "Why don't you take up a piece?" I said, "I don't know why I don't, I have never done it, never thought of it." He said "A number of people here have taken it up, and I have bought the land from them."

After talking awhile he said he would give me \$15 for the land if I would take it up. I asked him if it was all right and if I had a right to do it. He said I had. Then I told him all right I would do it.

He came around the next day with papers and we went to the notary public and I signed them and he paid me the \$15. Don't know whether I signed more than one or not. Went before the notary only once. He spoke about my wife taking up land. I didn't know that she had a right. He said she had and would give her \$20. She took up the land. She came down to the office with ~~he~~ and we went up and signed the papers and he paid her \$20. She was with me. I don't think we read over the papers. I did not and I know that she did not. Neither of us paid any money or executed any notes.

Witness was then shown the record in Oregon State Application to purchase school lands No. 8576, in the name of W. O. Randolph, involving lands mentioned in count 4 of the indictment; and he stated, these are all my signatures, but I never read the papers over.

I wouldn't know whether it is the same thing or not, but I know that I signed them. That is my signature on the assignment to Joost H. Schneider, I guess. The signature below mine is that of my wife, Pearle Randolph.

Witness was then shown the record in Oregon State Application to purchase No. 8593, in the case of Pearle Randolph (land 1130 in list B of the bill of particulars), and he stated the signature thereon was that of his wife at that time. That is also Pearle Randolph's signature and my signature on the assignment to Joost H. Schneider. Nothing was ever paid to either of us except the \$15 to me and the \$20 to my wife; and neither of us ever paid anything on the land.

The papers in the cases of the two Oregon State purchases in the names of W. O. Randolph and Pearle Randolph were introduced in evidence in connection with testimony of the witness George G. Brown. They are similar to the papers in the cases of all the other Oregon purchases introduced in connection with the testimony of the witness George G. Brown.

#### Cross-examination.

By Mr. WORTHINGTON:

"Q. Mr. Randolph, do you remember that you did not read the paper? A. Yes. I don't think I read it.

"Q. I mean do you distinctly remember that you did not read it? A. Yes. I did not read it; no.

"Q. You had forgotten your wife's name? A. Yes; I had forgotten my wife's name. That is not unusual under the circumstances."

*Thomas H. Reynolds.*

By Mr. BAKER:

I work for the Wells, Fargo Company at Salem, Oregon and was their agent at that place in 1898. I kept the express record of packages that come to Salem. I know what is called a commission package. A commission received would contain instructions 1131 from the agent at the point where it was sent, and contain papers to be delivered to persons, or it might contain checks in order to get trunks, or it might contain deeds, to have them recorded, or it might contain other papers with instructions as to them. I have the record book here of commissions received in 1898. Made it principally myself. There is a record entry here in my own handwriting, of August 12, 1898. The commission was received August 12, 1898. The record shows that papers were received from Portland, Oregon, and was made up August 12, 1898. It reads: "1898, August 12; No. 4, E. H. Snyder; Residence, Portland; Description, delivered seven applications and \$924.70 to Land Commissioners and return certificate. Land disposed of. Filed August 12, 1898." The package was then taken to the Land Office. The money was delivered at the Land Office, and the certificates returned to Portland, Oregon. The money was coin or currency.

*Witness Rudyard I. Smith.*

By Mr. BAKER:

I am a son-in-law of W. D. Harlan; and work in the Water Office of the District of Columbia. Worked there in 1902. I live at Takoma Park, with Mr. Harlan. Get my mail at Box 182, at the Post Office at Takoma Park, in the District of Columbia. I hardly ever get the mail from the Post Office; but one day I went up there to get the mail. I used to get off of the cars at about a quarter of a mile from the Post Office and walk across to the house; but this time I went up and got the mail. It was a letter addressed with a typewritten address, and was addressed to me. Going through the woods home I opened it and found a one-hundred dollar bill and 1132 a yellow piece of paper in it. Of course, I knew it was not mine because I had not been used to getting these kind of things. It was a white envelope and written in typewriting, postmarked, San Francisco, California. I gave the one-hundred dollar bill to Mr. Harlan. He said it was his. I have received no other letters of that character since.

*Witness David S. Stearns.*

By Mr. BAKER:

I live in Portland, Oregon, and real estate is my principal business. Am a notary public. A man purporting to be Joost H. Schneider appeared at my office in the year 1898 on two or three different occasions. I had no previous knowledge of him or acquaintance with him. Mr. Schneider identified Mr. W. O. Randolph to me. I had never seen him before to the best of my knowledge.

Witness was then shown by counsel for the Government, the papers in Oregon State Application No. 8576, in the name of W. O. Randolph; and he stated that his signature appears on the papers both as witness and as notary. He testified the same in substance as to the papers in Oregon State Application No. 8593, in the name of Pearl'e Randolph. He further testified that M. B. Brown in Oregon State Application No. 8610, was also identified to him by Mr. Schneider. And the same as to Oregon State Application No. 8580, in the name of Georgia Case.

1133

*John McPhaul.*

I haven't seen Mr. Schneider from that day to this.

By Mr. PUGH:

Counsel for the Government then exhibited to this witness, as relating to the first count in the indictment, a package of papers, a record numbered 2904, and the witness was asked to examine the

same and state what the record represents; and he stated as follows: The papers represent the file in selection No. 2904, made under the provisions of the Act of June 4, 1897, by C. W. Clarke. I have examined the selection application and compared the base lands and the selected lands in the application with the base lands and selected lands described in the first count of the indictment, and find that they correspond.

"By Mr. PUGH:

"I will here read into the record the names in which certain described State school lands, including those described in the first count of the indictment were purchased from the States of Oregon and California, together with the State numbers of the several purchases.

"Mr. WORTHINGTON: That is all right.

"Mr. PUGH: Section 16, town 19 south, range 7 E., W. M., Mrs. E. A. Aiken, State number 8653; Edward L. Aiken, State Number 8662. This is all Oregon base land.

Section 16, town 19 South, range 8 east, R. P. Sibley, State number 8634; Clara A. Sibley, State number 8635.

Section 16, town 19 south, range 9 E., Sophia Block, State number 8649; Viola Block, State number 8650.

The north half of section 36, town 20 south, range 8 east, 1134 B. W. Cody, State number 9646.

The east half of Section 16, town 17 south, range 9 east, C. A. Varney, State number 8646.

Section 36, town 21 south, range 7 east, Joseph McMurray State number 8624; George Zellar, State number 8625.

The west half of Section 36, town 20 south, range 9 east, Wm. Logus, State number 8616.

The following are California base lands:

"Section 16, town 21 south, range 34 east, M. D. M., Joseph Weinberger, State number 2221.

"Section 36, town 23 south, range 37 east, M. D. M., Margaret Andrews, State number 2225.

"Section 36, town 23 south, range 35 east, M. D. M., Tillie A. Flieschauer, State number 2232.

"By Mr. PUGH:

"Q. I will now ask you to state whether or not you have compared the base lands embraced in the State purchases represented by the persons and numbers I have read into the record with the school lands or base lands described in the first count of the indictment; and if so whether all of the lands represented by such purchases are included in the first count of the indictment. A. I have compared them, and they are not all included in the first count of the indictment. Part of the lands described are included in the accompanying cases with section 2904, and part of each of these descriptions that you have read are included in the indictment. In some cases all of the purchases; in others fractional parts of the State purchases are included in the various cases accompanying this case."

The selection application referred to was thereupon introduced in evidence and read to the jury; also the deed of relinquishment to the United States embracing, with other lands, the base lands described in count No. 1 of the indictment. The selection application is addressed to the Register and Receiver, United States Land Office, Olympia, Washington, and reads as follows:

"GENTLEMEN: I am the owner of section 16, T. 19 S., Ranges 7, 8 & 9 E., W. M., N. W.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  N. E.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 8 E., S. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  Sec. 16, T. 17 S., R. 9 E., all of Sec. 36, T. 21 S., R. 7 E., E.  $\frac{1}{2}$  S. W.  $\frac{1}{4}$  Sec. 36, T. 20 S., R. 9 E., W. M., Cascade Range Forest Reserve, Oregon; the N. W.  $\frac{1}{4}$  Sec. 16, T. 21 S., R. 34 E., S. W.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 37 E., and S. E.  $\frac{1}{4}$  Sec. 36, T. 23 S., R. 35 E., M. D. M., Sierra Forest Reserve, California, containing 3400 acres; that said land is situate and lying within the boundaries of the said Forest Reserves; that I desire to relinquish and reconvey said land unto the United States, and in lieu thereof to select the S.  $\frac{1}{2}$  N. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  S. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  Sec. 10, and all of Sections 14, 22, S.  $\frac{1}{2}$  and N. E.  $\frac{1}{4}$  Sec. 26, and all of sections 28 and 34, T. 15 North, Range 6 W., W. M., unsurveyed, Olympia land district, State of Washington and containing 3400 acres, under the provisions of the Act of June 4, 1897. (30 Stat., 36)

"In compliance with the regulations under said act, I have made, executed, and caused to be recorded in the proper county and  
1136 State, deeds of conveyance to the United States of the tracts first above described and situate within said Forest Reserves, and in relation thereto have caused proper abstracts of title to be made and authenticated, both of which are herewith submitted.

"There are also submitted certificates from the proper officers showing that the land relinquished, or surrendered, is free from incumbrance of any kind; evidence of publication; also that all taxes thereon, to the present time, have been paid, and an affidavit showing the lands selected to be non-mineral in character and unoccupied. I therefore ask that United States patent issue to me for the tract or tracts thus selected.

(Signed)

C. W. CLARKE.

"Dated May 9, 1899.

Land Office at Olympia, Washington.

SEPTEMBER 9, 1901.

I, Frank G. Deckenbach, Register of the Land Office, do hereby certify that the land above selected, in lieu of the land herein relinquished to the United States, is free from conflict, and that there is no adverse filing, entry or claim thereto.

(Signed)

FRANK G. DECKENBACH, *Register*.

"Selection approved by the Commissioner of the General Land Office, per letter "P", to the Register and Receiver — 190, — Div. R."

1137 (It was at this point agreed between counsel for the Government and counsel for the defendants that an abstract of title to the base lands accompanied the selection application in each of the various cases of selections referred to in the indictment, and in the bill of particulars.)

Upon further examination by counsel for the Government, this witness then identified certain records of forest lieu selections from the files of the General Land Office, based on those portions of the school lands (stated in List A of the bill of particulars) purchased from the State of Oregon or the State of California in the names of the persons above given, other than the base lands described in selection No. 2904, above stated. From said records it appeared that all of said additional selections were made in the name of C. W. Clarke, and that the school lands on which the same were based had been relinquished to the United States, as above stated with respect to selection No. 2904.

Other records from the files of the General Land Office were also identified by this witness as being records of selections involving duplications as bases therefor of certain of the school lands purchased in the names of the persons above named.

Counsel for the Government thereupon introduced in evidence and read to the jury the letter dated December 30, 1901, and given in full in count No. 1 of the indictment in connection with the overt act charged in said count; the said letter having been proved  
1138 to be a letter which was presented to the Commissioner of the General Land Office by the defendant Henry P. Dimond in connection with the aforesaid selection No. 2904, as in said first count of the indictment charged. The letter is as follows:

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.

"R"

WASHINGTON, D. C., Dec. 30, 1901.

Hon. Binger Hermann, Commissioner of the General Land Office.

SIR: I have the honor to hereby enter my appearance in behalf of C. W. Clarke, in the matter of his Forest Reserve Lieu Selection No. 2904, for lands in Sections 14, 22, 26, 28 and 34, T. 15 N., R. 6 W., Olympia, Washington,

in lieu of lands in

T. 19 S., R. 7 E., 19 S., 8 E., 19 S., 20 S., 8 E.,

21 S., 7 E., 20 S., 9 E., Oregon, and

T. 3 N., 24 E., 21 S., 34 E., 23 S., 37 E., 23 S., 35 E., M. D. M., California,

and request the usual notice of action.

Very respectfully,

*Attorney for C. W. Clarke.*

1139 (Endorsed.) U. S. General Land Office, Received Jan. 3, 1902. 1511. Henry P. Dimond. City. Dec. 30, 1901. Appearance for C. W. Clarke, F. L. S. 2904 Olympia Wash., ack'd Jan'y 3/02. R. Valk.

Thereupon counsel for the Government, referring to the record of said selection No. 2904, and to the records of the various additional selections and duplicated selections above mentioned, introduced in evidence such portions of all of said records as were described, referred to and identified in a list which had been previously prepared and furnished to counsel for the defendants, and which the witness had before him at the time; which said list consisted of three volumes and is hereafter in this bill of exceptions more particularly referred to and described.

"The COURT: They will need to be referred to in some way, so that the record will show what you are offering.

"Mr. PUGH: I was going to suggest that time might be saved by introducing this list, consisting of three volumes, allowing such portions to be copied into the record as might be deemed convenient or necessary by either side.

"Mr. CAMPBELL: We have no objection to the list provided we have had an opportunity to examine it before it goes in; that is, to check the list with the papers, and I would readily do that 1140 and do it at once if we could have that opportunity.

"Mr. PUGH: As we offer the papers in evidence, connected with the counts, we will leave them with the clerk, and then you can have them checked up and after you get them checked up we will offer the list.

"The COURT: If they find the list correct, it will save trouble.

"Mr. CAMPBELL: That is perfectly satisfactory so far as we are concerned.

"Mr. WORTHINGTON: I would like to understand whether there is any particular use to be made of these papers except what is quite apparent. In the first place, it is intended to show that the base lands or the state lands which were obtained from California and Oregon in the way shown by the testimony were to be used in getting other lands from the United States under the Act of 1897. That is one thing.

"Mr. PUGH: Yes.

"Mr. WORTHINGTON: Then, as to the cases in which Mr. Dimond entered an appearance, that fact is to be shown in connection with the transaction. Is there anything else?

"Mr. BAKER: Wherever there is, we will point it out.

"Mr. PUGH: Wherever it is this list points it out. Everything we call for is pointed out in this list.

"The COURT: They will see by examining the list.

"Mr. WORTHINGTON: I am perfectly willing to allow the list to stand for the records and to allow the list to be considered in evidence with the understanding that before you close your 1141 evidence you will call our attention to anything specific outside of what I have spoken of; because, speaking for Mr. Hyde, there is no question to be made here that the lands obtained were school lands, obtained for the purpose of having them exchanged under the act of 1897, nor will there be any dispute, as it has already been admitted by Mr. Hyde's counsel, that Mr. Dimond came here for the purpose of assisting in getting cases through the land office.



"Mr. PUGH: And this list consisting of these three volumes, includes and describes every paper we offer in connection with the selections.

"The COURT: I do not see how any harm can come, then, from treating the books as in the case. They do not prove anything themselves. They are simply a method of referring to the papers, and if the papers are not in the case, of course the books amount to nothing. They might be a help in using the papers. That is all."

Thereupon the witness McPhaul was further examined by counsel for the Government, with respect to the other counts of the indictment from count No. 2 to count No. 34, both inclusive, excepting counts No. 29 and No. 33 (as to which last two counts the Government offered no evidence), and with respect to certain other records of selections under the Act of June 4, 1897, from the files of the General Land Office; and he testified (the same as with respect to count No. 1 and the selections there referred to) that he had compared the descriptions of the base lands and selected lands as given in the said several counts, with the descriptions of the base 1142 lands and selected lands as given in the corresponding selection applications in said records from the files of the General Land Office, and had found that the base and selected lands described in the said several counts of the indictment were the same as the base and selected lands described in the said several corresponding selection applications. The names of the state purchasers of the base lands, as shown by the evidence previously introduced (the base lands being in all cases school lands within forest reserves in California or Oregon), and the state numbers of the applications to purchase such base lands, as shown by the evidence previously introduced, and the docket numbers (in the General Land Office) of the selections filed for public lands in exchange for such base lands, and the persons in whose names such selections were filed, all relating to the said several counts of the indictment, were then read in evidence to the jury as follows:

Count No. 2—Selection No. 961—Selector, F. A. Hyde.

Oregon.

E. E. Page.....	State No. 8573
A. H. Bean.....	" No. 8574

Count No. 3—Selection No. 962—Selector, F. A. Hyde.

Oregon.

Jennie P. Blair.....	State No. 8587
H. F. Bartels.....	" No. 8655

Count No. 4—Selection No. 3144—Selector, F. A. Hyde.

Oregon.

1143 W. O. Randolph.....	State No. 8576
T. H. Longton.....	" No. 8577
Lydia Armstrong.....	" No. 8812
B. P. Beede.....	" No. 8810

## California.

Louis F. Geisler..... State No. 2245

Count No. 5—Selection No. 2027—Selector, F. A. Hyde.

## Oregon.

S. B. Carlisle..... State No. 8817

Count No. 6—Selection No. 3360—Selector, F. A. Hyde.

## Oregon.

W. O. Randolph..... State No. 8576

Count No. 7—Selection No. 3534—Selector, C. W. Clarke.

## Oregon.

Mary Zeller..... State No. 8623

Count No. 8—Selection No. 1590—Selector, C. W. Clarke.

## Oregon.

Maggie Hunter..... State No. 8718

Count No. 9—Selection No. 1591—Selector, C. W. Clarke.

## Oregon.

Araminta Long..... State No. 8607

V. P. Conklin..... " No. 8594

Count No. 10—Selection No. 1592—Selector, C. W. Clarke.

## Oregon.

Anna Peebles..... State No. 8714

Laura Dalaba..... " No. 8715

1144 Count No. 11—Selection No. 1594—Selector, C. W. Clarke.

## Oregon.

Wm. Hunter..... State No. 8709

W. W. Davis..... " No. 8710

Count No. 12—Selection No. 1213—Selector, C. W. Clarke.

## Oregon.

Minnie Schmale..... State No. 8626

Count No. 13—Selection No. 2129—Selector, C. W. Clarke.

Oregon.

G. J. Hartman, Sr. . . . . State No. 8613

Count No. 14—Selection No. 2849—Selector, C. W. Clarke.

Oregon.

B. F. Parker. . . . . State No. 8663

Count No. 15—Selection No. 1153—Selector, C. W. Clarke.

Oregon.

Andrew Anderson . . . . .	State No. —
Dexter Kiser . . . . .	" No. 8708
Maggie Hunter . . . . .	" No. 8718
V. P. Conklin . . . . .	" No. 8594
Araminta Long . . . . .	" No. 8607
Anna Peebles . . . . .	" No. 8714
Laura Dalaba . . . . .	" No. 8715
Wm. Hunter . . . . .	" No. 8709
W. W. Davis . . . . .	" No. 8710
Mary C. Powers . . . . .	" No. 8713

1145 Count No. 16.—Selection No. 1593—Selector, C. W. Clarke.

Oregon.

Eva F. Fouch . . . . .	State No. 8611
W. O. Fouch . . . . .	" No. 8612

Count No. 17—Selection No. 1609—Selector, F. A. Hyde.

Oregon.

L. R. Peebles . . . . . State No. 8716

Count No. 18—Selection No. 1103—Selector, A. S. Baldwin.

Oregon.

Staunton E. Brady . . . . .	State No. 8600
R. T. Judson . . . . .	" No. 8601
C. H. Ford . . . . .	" No. 8596
T. F. Ford . . . . .	" No. 8597

Count No. 19—Selection No. 2086—Selector, F. A. Hyde.

Oregon.

George Wright . . . . . State No. 8814

Count No. 20—Selection No. 1000—Selector, F. A. Hyde.

Oregon.

S. B. Carlisle..... State No. 8817

Count No. 21—Selection No. 960—Selector, F. A. Hyde.

Oregon.

L. R. Peebles..... State No. 8716

Count No. 22—Selection No. 4060—Selector, F. A. Hyde.

Oregon.

L. K. Wilson..... State No. 8585

A. Abrahamson..... " No. 8717

1146 Count No. 23—Selection No. 964—Selector, F. A. Hyde.

Oregon.

Jennie P. Blair..... State No. 8587

Winnie Edwards..... " No. 8588

Count No. 24—Selection No. 751—Selector, F. A. Hyde.

Oregon.

C. W. Mason..... State No. 8586

Count No. 25—Selection No. 1263—Selector, C. W. Clarke.

Oregon.

C. A. Varney..... State No. 8646

Count No. 26—Selection Nos. 460, 483, 705, 705½ and 1034 to 1042, both inclusive—Selector, Elizabeth Dimond.

California.

Elizabeth Dimond..... State No. 2285

Count No. 27—Selection No. 3571—Selector, F. A. Hyde & Co.

California.

Henry Randolph..... State No. 6613

James H. Cole..... " No. 12440

Geo. H. Hamer..... " No. 12441

C. P. Lyndall..... " No. 6603

Count No. 28—Selection No. 2061—Selector, F. A. Hyde.

California.

H. E. J. Palmer..... State No. 4356

Count No. 30—Selection No. 4586—Selector, Crawford W. Clarke.

California.

James Mason..... State No. 6470

1147 Count No. 31—Selection No. 4588—Selector, Crawford W. Clarke.

California.

James Mason..... State No. 6470

Count No. 32—Selection No. 3030—Selector, F. A. Hyde.

California.

Helena Liebes.....	State No. 2543
Isaac Liebes.....	" No. 2344
Isadore Weber.....	" No. 6606
Gustav Marcus.....	" No. 6609
Flora Liebes.....	" No. 6605
Harry Weber.....	" No. 6604
Joe Weber.....	" No. 6608

Count No. 34—Selection No. 3029—Selector, F. A. Hyde & Company.

California.

Rebecca L. Strong..... State No. 12340  
(Rebecca L. Newman.)

J. L. Donovan..... State No. 12423

It was further shown that as to some of said several counts, namely, count No. 2, count No. 8, count No. 9, count No. 10, and count No. 11, all the school lands so purchased from the state or states were used in one selection and there were no additional selections as in count No. 1. As to the other counts there were additional selections (one or more as to each) based on portions of the school lands so purchased from the state or states (and described in 1148 list A of the bill of particulars) which were not used in the principal or corresponding selections, the same as shown with respect to count No. 1. And the testimony of this witness as to such counts, and as to the principal and additional selections, was the same as his testimony relating to count No. 1. Whereupon counsel for the Government introduced in evidence such portions

of the records from the files of the General Land Office of all said principal and additional selections as were described, referred to and identified in the three volume list hereinbefore mentioned.

Thereupon counsel for the Government having proved by other evidence in the case that the various letters or papers which are set forth in the different counts of the indictment (excepting counts No. 29 and No. 33 aforesaid), and which purport to be signed by the defendant Henry P. Dimond, were in fact signed by him and were by him presented or transmitted to the Commissioner of the General Land Office, at Washington, in the District of Columbia, as charged in the several counts of the indictment, and had become parts of the files of the General Land Office in the records of the selections concerning which they were so presented or transmitted, the said letters or papers were severally introduced in evidence and read to the jury in connection with the records of the selections to which they relate. The official endorsements on the back of said letters or papers, showing the dates when the same were received and their receipt acknowledged by the Commissioner of the General Land Office, were also read in evidence to the jury.

Thereupon, counsel for the Government having proved that the signature to a certain paper or document, dated San Francisco, California, November 24, 1902, and given in Count No. 3 of the indictment, was the genuine signature of the defendant F. A. Hyde; and that the said paper or document was a part of the file of the General Land Office in the record of forest lien selection No. 962; and that both the base lands and the selected lands forming the subject matter of said selection No. 962 are the same as the base lands and selected lands described in count No. 3 of the indictment on trial, and having submitted evidence tending to prove that the said paper or document was filed by the defendant F. A. Hyde in the United States Land Office at Visalia, California, for transmittal to the Commissioner of the General Land Office at Washington, D. C., introduced the said paper or document in evidence in connection with the overt act by the defendant Hyde charged in said count No. 3 of the indictment. The said paper or document was then read in evidence to the jury. It is the same as given in count No. 3 of the indictment, and bears the official endorsement of the Register of the United States Land Office at Visalia, California, showing that it was filed in that office December 10, 1902.

In this connection counsel for the Government also introduced in evidence, as a part of the file of the record of said forest lien selection No. 962, and as relating to said count No. 3 of the indictment and to the paper or document referred to in connection with the overt act on the part of the defendant Hyde therein charged, a letter from the Register of the United States Land Office at Visalia, California, to the Commissioner of the General Land Office at Washington, D. C., dated March 20, 1903, the same being the letter whereby, in the usual and regular course of business as shown by other evidence in the case, certain papers relating to the said forest lien selection No. 962, including the paper or document last aforesaid, were transmitted from the United States Land Office

at Visalia, California, to the Commissioner of the General Land Office at Washington, D. C. The said letter bears the official endorsement of the Commissioner of the General Land Office at Washington, D. C., showing that the same was received at that office March 27, 1903, and filed on that date in the record of said forest lieu selection No. 962.

Thereupon, counsel for the Government having introduced testimony tending to prove that the defendant F. A. Hyde, on July 28, 1903, filed in the United States Land Office at Vancouver, Washington, a certain writing, being an appeal to the Secretary of the Interior from a decision of the Commissioner of the General Land Office which held for cancellation forest lieu selection No. 1153, embracing the base and selected lands described in count No. 15 of the indictment; and having introduced testimony tending to prove that it was the usual course of business and regular practice to file forest lieu selection applications and all papers connected with or relating to such selections in the United States Land Office of the Land District wherein the selected lands are situated, and for the officers of such land office to transmit, through the mail of the United States, any and all such papers to the Commissioner of the General Land Office at Washington, D. C.; and that the said writing or appeal was so transmitted by the officers of the United States  
1151 Land Office at Vancouver, Washington, to the Commissioner of the General Land Office at Washington, D. C.; and that at the time of the trial of this case the said writing or appeal was and had continued to be one of the files of the General Land Office in connection with the said forest lieu selection No. 1153, the said writing or appeal was then offered in evidence in connection with the overt act charged in said count No. 15 of the indictment.

"Mr. CAMPBELL: I desire to save an objection on the ground that that is not an overt act committed within the District of Columbia. It appears to have been filed in the Land Office on the Pacific Coast.

"The COURT: It is one alleged in the indictment?

"Mr. PUGH: It is.

"The COURT: Then it will be admissible in evidence, and an exception may be noted."

To this ruling of the Court counsel for the defendants and each of them duly excepted.

The said writing or appeal was then read in evidence to the jury. It is the same as given in count No. 15 of the indictment, and bears the official endorsement of the Register of the United States Land Office at Vancouver, Washington, showing that the same was filed in that office July 28, 1903.

In connection with the introduction in evidence of the aforesaid writing or appeal, counsel for the Government introduced in evidence and read to the jury a letter dated July 29, 1903, from the officers of the United States Land Office at Vancouver, Washington,  
1152 transmitting the said writing or appeal to the Commissioner of the General Land Office. The matter of said letter refers to the said writing or appeal as enclosed and transmitted therewith,

and the letter bears the official endorsement of the Commissioner of the General Land Office at Washington, D. C., showing that the same was received at that office August 3, 1903, and accepted and filed.

Thereupon counsel for the Government having proved that the signature to a certain paper or document, dated San Francisco, California, April 18th, 1901, and given in count No. 22 of the indictment, was the genuine signature of the defendant F. A. Hyde, and that the said paper or document was a part of the file of the General Land Office in the record of forest lieu selection No. 4060 made in the name of F. A. Hyde; and that both the base lands and the selected lands forming the subject matter of said selection No. 4060 are the same as the base lands and the selected lands described in count No. 22 of the indictment, introduced the said paper or document in evidence, as Exhibit 61, in connection with the overt act on the part of the defendant Hyde charged in said count No. 22 of the indictment, and in connection with the letter from the defendant Dimond to the Commissioner of the General Land Office, dated March 31, 1902, which is given in full in said count No. 22 of the indictment.

The said paper or document was read to the jury, and is in the words and figures following:

1153

(EXHIBIT No. 61.)

Whereas, the undersigned, F. A. Hyde, whose post office address is San Francisco, Cal., has made application to select under the provisions of the Act of June 4, 1897, (30 Stats., 36), in the U. S. Land Office at Sacramento, Cal., the following described tract:

S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  Sec. 30, T. 12 N., R. 14 E., M. D. M.

And whereas, it is provided by Circular "P", dated January 29, 1900, of the Honorable Commissioner of the General Land Office, that a notice of such selection be posted on the ground described in the application, and the proof of such posting be filed in the U. S. Land Office for the District in which the land is situated.

Now, therefore, S. E. Kiefer is hereby duly authorized and appointed as my agent to post notices on the ground described in my said application, and to make affidavit of that fact, and also of the fact that said notices remain posted during the period of publication.

F. A. HYDE.

San Francisco, California, April 18th, 1901.

The said letter of March 31, 1902, from the defendant Dimond to the Commissioner of the General Land Office, and the endorsement thereon (which endorsement was read in evidence to the jury), are in the words and figures following:



1154

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.

"N"

WASHINGTON, D. C., *March 31, 1902.*

Hon. Binger Hermann, Commissioner of the General Land Office.

SIR: I have the honor to file herewith in behalf of F. A. Hyde in the matter of his Forest Lieu Selection No. 4060, Act of June 4, 1897, (30 Stats., 36), Authority to Post Notices on Land Dated April 18, 1901.

Said filing is made in compliance with requirement of letter "N" of March 3, 1902, and request the usual notice of action.

Very respectfully,

HENRY P. DIMOND,  
*Attorney for F. A. Hyde.*

(Endorsed:) U. S. General Land Office, Received Mar. 31, 1902. 53436. Henry P. Dimond, City. Mar. 31, 1902. In behalf of F. A. Hyde & Co.—F. L. S. 4060 files authority to Post Notice. Ack'd M'ch 3/02. N. 1 inc.

1155 The letter "N" of March 3, 1902, referred to in said Dimond letter of March 31, 1902, was also introduced in evidence in connection with the overt act charged in said count No. 22 on the part of the defendant Hyde, the material part thereof being as follows:

"N."

E. C. F.

J. McP.  
H. G. P.

Department of the Interior,  
General Land Office.

WASHINGTON, D. C., *March 3, 1902.*

Address only the Commissioner of the General Land Office.

Register and Receiver, Sacramento, California.

SIRS: April 18, 1901, F. A. Hyde made Forest Lieu Selection No. 4060 for the S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 30, T. 12 N., R. 14 E., M. D. M., accompanying said selection by a non-mineral and non-occupancy affidavit executed in accordance with the regulations. Notice of said selection was given by publication and posting from May 23, to June 23, 1901, and the proofs thereof submitted appear to be regular save that there is no evidence of the authority of S. E. Keiffer who executed the affidavit of continuous posting upon the land to act as agent of the selector in that respect.

\* \* \* \* \*

Very respectfully,

BINGER HERMANN,  
*Commissioner.*

M. L.

1156 Counsel for the Government having offered in evidence, as to each of the counts of the indictment from count No. 1 to count No. 34, inclusive, excepting count No. 29 and count No. 33 as aforesaid, the records of the principal and additional selections pertaining to said several counts, respectively, thereupon and in connection therewith made the following offer:

"Mr. PUGH: We now offer in connection with the testimony of this witness, the list to which he has referred in the course of his examination, which is in three volumes, marked respectively "Counts 1 to 14 inclusive," "Counts 15 to 25 inclusive," and "Counts 26 to 34 inclusive," which list contains a schedule of all the papers and documents relating to the selections, as to which this witness has testified, which we have already offered specifically, and those which we have not offered by specific description—all of which we now offer in evidence, in connection with the Forest Lieu Selections referred to by this witness, in the course of his examination.

Thereupon, this witness further testified that the records of all the forest lieu selections above referred to came from the files of the General Land Office; also, that he had examined said records with a view to ascertaining whether they show any irregularity as to the manner in which the selections were handled in the General Land Office. As to a large number of the selections, he stated that he found the same had been expedited to approval in the General Land Office; that is, they had been taken up out of their regular order in advance of other cases which were ahead of them on the

1157 docket, and approved for patent by the Commissioner of the General Land Office from three to eighteen months before they could have been reached in the ordinary and due course of business in the office. This was found to be the fact with respect to a number of the principal selections corresponding to the several counts of the indictment as well as with respect to a number of the additional selections referred to in connection with said several counts. The official notations on the records of the selections so advanced to approval were shown to be generally in the handwriting of W. E. Valk or of one of the clerks under him in the office.

Thereupon, counsel for the Government, in connection with the testimony of this witness and in connection with all the testimony relating to the official notations on the records of the aforesaid selections, introduced in evidence, in addition to the papers and documents theretofore introduced, the jackets enclosing the records of the various forest lieu selections as to which this witness had testified, together with the official numbers and notations which appear on such jackets.

"By Mr. PUGH:

"Q. Mr. McPhaul, have you here the records of the General Land Office showing the forest lieu selections based on the school lands mentioned and described in list B of the bill of particulars? A. Yes.

"Q. Will you produce them? A. They are over there (indicating).

1158 "Mr. PUGH: We now offer in evidence the records and General Land Office files, including the jackets enclosing the same, showing the forest lieu selections based upon the lands described in list B of the bill of particulars, a list of which selections and record files of the same is set out in a book marked "Bill of Particulars," which book is submitted with the offer for convenience of reference. We will turn all of the papers in connection with the book over to the clerk, for examination by counsel for the defendants. We do not care to go further into them at this time."

Thereupon, counsel for the Government offered in evidence, as parts of the files in connection with forest lieu selections No. 4084 and 4085 from the General Land Office, two certain affidavits by the defendant Joost H. Schneider. The genuineness of Schneider's signature to said affidavits had been previously proved, and the affidavits had also been shown to have emanated from the office of F. A. Hyde. The affidavits were each dated April 11, 1901, and the selections in which they were filed were cases where the defendant Hyde had obtained from the State of California the forest reserve school lands and had caused the same to be relinquished to the United States as the base for the said selections. The school lands were embraced in the C. P. Carpenter applications to purchase (list B of the bill of particulars) referred to in connection with the testimony of the witness J. F. Shearman, as to the signatures, C. P. Carpenter, as hereinbefore set forth.

Counsel for the defendants, and especially on behalf of the  
1159 defendant Schneider, objected to the admission of said affidavits in evidence, on the ground that upon the evidence of said witness Shearman the Court would not be justified in submitting to the jury the question of the genuineness of the signatures of C. P. Carpenter; and on the further ground that there was no evidence to show that the affidavits were untrue as to the statements contained therein or that when Schneider made the affidavits he had knowledge of any fraud on the part of the defendant Hyde in the purchase of the forest reserve school lands in the name of Carpenter.

"The COURT: I think they are admissible as against Hyde whether they are against Schneider or not.

"Mr. BAKER: They are admissible, I say, as against the defendant Hyde, because the application is one of his own applications, and any paper that he filed or had filed or obtained would be admissible against him. And, of course, for that purpose they are admissible against all the defendants in this case, because they are acts done in furtherance of the general conspiracy. They ask your Honor to segregate these two affidavits out of here, out of the whole case, in an attempt to save Mr. Schneider. They are acts done in furtherance of the conspiracy, and I say we would have a right to argue to the jury that when Schneider signed those affidavits, knowing what he says he himself knew at the time, he was aiding these men in this conspiracy.

"Mr. WORTHINGTON: If these papers are offered as against the defendant Hyde, your Honor, and the question whether any use of them can be made for the purpose of bringing Mr. Schneider within

the statute of limitations is to be reserved, I am entirely content, and that can be settled later.

"The COURT: I think that would be the better way to dispose of it. \* \* \* They are apparently admissible as against the defendant Hyde, and may be received. If it should turn out that there is no other evidence, except the making of these two affidavits, or any act of Schneider within the three years, then the Court would further consider the question whether they are admissible as against him; and will reserve entirely the question of whether they are admissible against Schneider at all."

The affidavits referred to were thereupon introduced in evidence and read to the jury (Exhibits 531 & 532), and are as follows:

### EXHIBIT 531.

Act of June 4, 1897.

#### *Affidavit of Non-Mineral Character and Non-Occupancy.*

U. S. Land Office,  
San Francisco, California.

J. H. Schneider, being duly sworn according to law, deposes and says: That he is over the age of 21 years and is well acquainted with the character of the following described land and with each and every legal subdivision thereof, to wit:

The south-east quarter of the north-west quarter of Section Twelve (12) in Township Ten (10) South, Range Four (4) East of Mount Diablo Meridian.

That there is no occupancy of said land adverse to the selection thereof under the Act of June 4, 1897, by F. A. Hyde & Co.,

That the tract applied for is agricultural in character and contains no known deposits of coal, or other minerals and is not subject to entry under the coal or mineral land laws of the United States; That the said land is not in a mineral Township nor situated within six miles of a known mining claim;

That he has frequently passed over the same and his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land and that the application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes; and that

the above and foregoing statement as to the character of said land apply to each and every legal subdivision thereof; and that his Post Office address is Gilroy, California.

JOOST H. SCHNEIDER.

1162 I hereby certify that the foregoing affidavit was read to affiant before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by ———), and that I verily believe him to be a credible person and the person he represents himself to be, and that his affidavit was subscribed and sworn to before me at my office in San Francisco, Cal., Land District, on this 11th day of April, 1901.

S. S. MORTON, *Receiver*.

(Endorsed on back:) Act of June 4, 1897. 4084. Affidavit of Joost H. Schneider as to non-mineral character. Filed with application of F. A. Hyde & Co. for S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 12, T. 10 S., R. 4 E., M. D. M. Land District, San Francisco. State, California. 1901. 71283-1.

1163

EXHIBIT No. 532.

Act of June 4, 1897.

*Affidavit of Non-Mineral Character and Non-Occupancy.*

U. S. Land Office,  
San Francisco, California.

J. H. Schneider, being duly sworn, according to law, deposes and says: That he is over the age of 21 years and is well acquainted with the character of the following described land and with each and every subdivision thereof, to wit:

Lot 6 of Section 28, Township 9 South, Range 4 East of Mount Diablo Meridian.

That there is no occupation of said land adverse to the selection thereof under the Act of June 4, 1897, by F. A. Hyde & Co.

That the tract applied for is agricultural in character and contains no known deposits of coal, or other minerals and is not subject to entry under the coal or mineral land laws of the United States; That the said land is not in a mineral Township nor situated within six miles of a known mining claim;

That he has frequently passed over the same and his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to

his knowledge, any placer, cement, gravel, or other valuable  
1164 mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of

miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land and that the application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes; and that the above and foregoing statements as to the character of said land apply to each and every legal subdivision thereof; and that his Post Office address is Gilroy, California.

JOOST H. SCHNEIDER.

I hereby certify that the foregoing affidavit was read to affiant before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by ———), and that I verily believe him to be a credible person and the person he represents himself to be, and that his affidavit was subscribed and sworn to before me at my office in San Francisco, Cal., Land District, on this 11th day of April, 1901.

S. S. MORTON, *Receiver.*

(Endorsed on back:) Act of June 4, 1897. 4085.  
1165 Affidavit of Joost H. Schneider as to Non-Mineral Character.  
Filed with application of F. A. Hyde & Co. for ———  
Lot 6 of Sec. 28, T. 9 S., R. 4 E., M. D. M. Land District, San Francisco, State, California. 1901. 71284-2.

*John McPhaul.*

Cross-examination.

By Mr. WORTHINGTON:

I was not employed in the division in which the cases about which I have testified were advanced, prior to September 15, 1902, when I took Mr. Valk's place. From the spring of 1901 until I took charge of the work, I reviewed the work of that division; and I was in conference with the clerks daily. I was familiar with the condition of the work there. I had some personal knowledge of the work in that division during the years 1898, 1899, and 1900, and during the early part of 1901.

There were probably about eight or ten clerks employed under Mr. Valk at the time Division R was formed, and the forest lien selection work transferred to it.

1166 The endorsements on the selection jackets are generally made by the clerk who handles the case.

The roll of suspended selections marked as Exhibit No. 21 (previously introduced in evidence) was prepared under my supervision. This roll should show all the selection cases in which Mr. Hyde's name appeared in any manner, either as attorney, as principal, or in any other manner, based upon sections 16 or 36 in the Cascade Range Forest reserve in Oregon, or in the Lake Tahoe, San Jacinto, or other forest reserves in California. These are non-patented cases in this list. Some are approved cases but they are non-patented cases. Where they have been approved the list ought to show it.

*R. E. Valk.*

Further cross-examination.

By Mr. WORTHINGTON:

I testified in a case a littel over a year ago that Mr. Hyde's selection cases which came before me were left to take their turn, unless they were on one of the lists that Mr. Benson furnished.

Up to the time that Division R was created, in 1897, I had charge in Division P of the forest lieu business. In 1901, I had about ten or a dozen clerks. I trusted the clerks with a part of the work, and did not personally supervise it all. In case a clerk decided that certain action should be taken in the way of approval, or in the way of calling for information, he would prepare a letter himself, unless it was a matter about which he was in doubt.

1167 I would initial the letters upon the faith of what the clerk had done. In fully ninety per cent of the cases my connection with them was purely formal. I took my usual vacation during all of this time. I went into Division R in the early part of 1901, and remained in charge until September, 1902. Here the force was considerably increased. I had eighteen or twenty clerks in September 1902, when I was transferred to another Division.

The order of the Commissioner that cases should be taken up without regard to their numerical order, when they were ready for disposition was a verbal order, and was issued some time in the fall of 1901.

Cases that came to the Land Office on appeal from Local Land Office were considered current work, and would be taken up as they were received.

I did not expedite any cases at the suggestion of Mr. Dimond, nor did he, at any time, ask me to do so.

*Woodford D. Harlan.*

Recalled for further examination.

By Mr. PUGH:

Q. Mr. Harlan, you have already been sworn in this case, I believe? A. Yes sir.

Q. I will ask you to state when and where you first testified publicly in regard to the disclosures you made with respect to this case? A. In the City of New York.

Q. And when? A. During the month of January, and also in the month of February, 1901.

1168 Cross-examination.

By Mr. WORTHINGTON:

I had told Mr. Burns about it sometime before that; probably as early as November, 1903. I first spoke about these financial transactions between Mr. Benson and myself to the Secretary of the Interior

in his office. Those present at the time besides the Secretary were Assistant Secretary Ryan, Mr. Pugh, Mr. Burns and a stenographer. I know Scott Smith who who was the Secretary's private secretary. I don't think he was present at the time.

I also told the Secretary about Mr. Valk's connection with the matter as far as I knew; and as I have testified about it here.

By Mr. CAMPBELL:

I do not recall that I told anyone else except the Secretary and the people that were in his office at that time about these matters until I testified in New York.

By Mr. PUGH:

The record of Benson's first arrest in Washington City was then offered in evidence to show the date of his arrest, and the fact that his arrest was based upon the complainant alleging the bribery only of Mr. Harlan and did not refer in any way to any bribery of Mr. Valk.

Thereupon counsel for the defendants admitted that Benson's first arrest was on the 18th of December, 1903, and that his arrest was based upon a complaint charging the bribery of Mr. Harlan.

1169 LOUISE E. AUBRY, recalled for further cross-examination.

By Mr. CAMPBELL:

As near as I can say from memory, Messrs. Hyde and Dimond called upon me between November 19, 1902, and December 16, 1902.

I turned these papers over to Mr. Francis J. Heney in April, 1903, at his office in the Cole Building in San Francisco. One of his clerks was present at the time.

I do not remember that I testified that Mr. Bailey was the agent of Hyde and Dimond. I thought I said Hyde or Dimond. My impression is that he mentioned Mr. Hyde. I brought the matter of the conversation before the Board of Trustees of the California Mining Bureau. Before this matter was brought before the Board of Trustees I mentioned it to Horace Stephens, who was investigating land irregularities as my agent.

W. K. SLACK, recalled for further examination.

By Mr. PUGH:

This witness was here shown Exhibit No. 533, a letter from Henry P. Dimond addressed to A. B. Pugh and asked to state in whose handwriting it is. He answered: In the handwriting of Mr. Henry P. Dimond.

He was also shown a letter dated February 20, 1903, pur-  
1170 porting to be signed by Henry P. Dimond and addressed to

Mr. Pugh, and he stated that the signature was that of Henry P. Dimond, and also the memorandum to the left of the signature.



*A. B. Pugh.*

Direct examination.

By Mr. BAKER:

I am a lawyer by profession, and am employed specially as an attorney for the United States in this case. Exhibit 533, a letter dated February 12, 1903, addressed to A. B. Pugh and signed "Henry P. Dimond" was handed to me by Mr. Steece upon my return to San Francisco from Portland, Oregon about February 18th or 19th, 1903. I answered the letter and mailed the answer to Henry P. Dimond, Room 7, 415 Montgomery St., San Francisco, California. Exhibit 534 which you show me, is a copy of the answer, except the signature which is in my writing, as is also "Room 79." This letter is dated February 19, 1903.

Exhibit 535, which you show me, is the reply which I received through the mail at the Grand Hotel, where I was stopping at the time in San Francisco. I did nothing further, as far as Mr. Dimond was concerned, after the receipt of the letter Exhibit 535.

My letter to Mr. Dimond was sent by mail, and his reply thereto I received by mail. My letter was dated February 19, 1903. Mr. Dimond's reply was dated February 20, 1903, and I received it about that time, the evening of the same day according to my recollection, or some time during the day.

1171 The letters were thereupon introduced in evidence, and are in the words and figures following:

EXHIBIT 533.

Henry P. Dimond,  
Attorney at Law,  
Glover Building, 1419 F Street N. W.

S. F. WASHINGTON, D. C., *Feb'y* 12, 1903.

A. B. Pugh, Esq., c/o U. S. Land Office, San Francisco.

SIR: Subject to appointment and your convenience, the writer begs the favor of a personal interview relative to a matter of importance to you in connection with the investigations you are making.

Very respectfully,

HENRY P. DIMOND.

Room 7, 415 Mont'y St.

EXHIBIT 534.

(Copy.)

SAN FRANCISCO, *Feb.* 19th, 1903.

Mr. Henry P. Dimond, 415 Montgomery Street, San Francisco, Cal.

SIR. Upon my return to the city today, I find your letter  
1172 of the 12th inst. Replying thereto, I have to say that I will

be at the Grand Hotel tomorrow (Friday) evening at 7:30 o'clock, when I can see you.

Very respectfully,  
Room 79.

A. B. PUGH.

EXHIBIT 535.

Henry P. Dimond,  
Attorney at Law,  
415 Montgomery Street.

Codes:  
Western Union  
Anglo-American.

Cable Address:  
"Contax."

SAN FRANCISCO, *February 20, 1903.*

Mr. A. B. Pugh, Grand Hotel, San Francisco.

SIR: Replying to yours of the 19th inst., received this morning, I beg to say that I am engaged this evening, but will be at my office from 9:30 to 12 tomorrow (Saturday) morning when I shall be at liberty to see you at any time you may find it convenient to call.

Very respectfully,

HENRY P. DIMOND.

Or this A. M. up to 12 o'clock and from 2 to 4 p. m.

1173 W. S. KINGSBURY, recalled for cross-examination.

By Mr. CAMPBELL:

I do not know of any action that has been instituted by the State of California to cancel any of the patents, issued since 1897. I would know if such action had been instituted.

Counsel for the Government thereupon announced that the Government rested.

Thereupon, counsel for the defendants and each of them, moved the court to strike from the record, and to take from the consideration of the jury, all the evidence introduced by the Government relating to the transactions in Oregon in the year 1898, by the defendant Schneider, upon the following grounds:

(1) That the indictment charged a conspiracy to which both the defendants Hyde and Benson were necessary parties, and that the Government had offered no evidence tending to prove that the defendant Benson had any knowledge as to the alleged fraudulent transactions of the defendant Schneider in Oregon in the year 1898.

(2) Because the deeds from the State of Oregon conveying the school lands in the Cascade Range Forest Reserve which  
1174 were obtained by or through the defendant Schneider, gave a good title to the purchasers who would take free and clear

of any charge of criminality in regard thereto, unless there was evidence which tended to show that such purchasers knew of the alleged fraudulent character of the proceedings by which the school lands were obtained.

(3) That the only evidence connecting the defendant Benson with Schneider's operations in Oregon in 1898, related to the disposition of the school lands in the Cascade Range Forest Reserve after the title to them had been obtained by or through the defendant Hyde, and to the selection of Public lands which were to be obtained from the United States in lieu of such school lands. In other words, the evidence introduced by the Government tended to show that Mr. Hyde and Mr. Schneider, by certain irregular methods complained of, had obtained these school lands from the State, and that afterwards Mr. Benson was concerned with Mr. Hyde in the disposition of the lands.

(4) Because even if the defendants conspired in the year 1898 to obtain school lands in the Cascade Range Forest Reserve from the State or Oregon, that conspiracy was barred by the Statute of Limitations.

(5) Because as to the transactions in Oregon the testimony in the case showed that Schneider was an employé of the defendant Hyde, and that in what he did in Oregon he acted as an employé of Hyde, and that the evidence does not show any agreement or conspiracy between Hyde and Schneider any more than as between Hyde and the witness Miss Marion L. Doyle, or as between Hyde and the other clerks or employés who had assisted him and performed such duties as were assigned to them by their employer; and it was not competent on such evidence to submit to the jury the question whether Hyde was in a conspiracy with Schneider, as charged in the indictment on trial.

(6) Because of the Statute of Limitations.

But the Court overruled the motion, to which ruling of the Court counsel for the defendants and each of them duly excepted.

Thereupon counsel for the defendants and each of them moved the Court to instruct the jury to find a verdict in favor of the defendants and each of them upon the following grounds:

1. Because the indictment charged a conspiracy as to which both the defendant Hyde and the defendant Benson were necessary parties, and that there was no sufficient evidence in the case to justify the submission of the question to the jury whether the defendant Hyde and the defendant Benson did conspire as charged in the indictment.

2. Because even if the evidence tended to establish such a conspiracy as is charged in the indictment, it further showed that such a conspiracy if entered into was entered into elsewhere than in the District of Columbia.

3. Because even if such a conspiracy as is charged in the indictment was entered into and overt acts in pursuance thereof were committed by one or more of the defendants in the District of Columbia the commission of such overt acts would not give the courts of the District of Columbia jurisdiction as to the conspiracy itself.

And counsel for the defendant Schneider moved the court to instruct the jury to render a verdict of not guilty as to him upon the following additional grounds:

(a) That even if the evidence tended to prove that such a conspiracy as is charged in the indictment was entered into, there was no evidence sufficient to go to the jury tending to prove that the defendant Schneider was at any time a party to such conspiracy.

(b) Because there was no sufficient evidence tending to show that the defendant Schneider consciously participated in the conspiracy charged in the indictment within three years next preceding the finding of the indictment in this case.

And counsel for the defendants Schneider and Dimond moved the court to instruct the jury to render a verdict of not guilty as to each of them respectively, on the further ground that the evidence tended to show that the relation between them and the defendant Hyde was merely that of employer and employee.

But the Court overruled each of the said several motions.

In deciding the motions, the Court, amongst other things, said:

"The COURT: I will now dispose of the motions that have been made and argued during the last three days.

"First, there is a motion on behalf of all of the defendants to take the case from the jury on the ground that there is no  
1177 evidence to support the allegation that the defendants conspired within this district.

"It is not claimed on the part of the Government that the defendants did conspire within this district in any other sense than that overt acts were committed by them here. The contention is that if any overt act was committed here the defendants thereby conspired here.

"It is undoubtedly the rule of the common law that a conspiracy may be prosecuted either in the county where the conspiracy was originally formed, or in the county in which any overt act in pursuance thereof was committed. An overt act being an act strictly in pursuance of the conspiracy, that is, an act which was fairly within the contemplation of the parties to the conspiracy, the performance of that act by one is, in law, the performance of all.

"It is exactly as if all had been present and assisted in performing it, with the same common purpose which they had when they entered into the conspiracy. For the purpose of the conspiracy, they had assumed the attribute of unity or individuality. They are to be considered one person. Wherever one acts within the scope of the conspiracy, all act. It is not perceived that any difference in reason or principle exists in this respect between conspiracy at the common law and conspiracy under the statute here involved. The fact that the conspiracy cannot be prosecuted until an overt act has been performed does not seem to make the case a different one in  
1178 respect to the question whether the overt act, when performed, is to be considered the act of all. Consequently the cases cited from the Supreme Court of the United States are not to be considered as in conflict with the common law rule.

"In none of these cases has it been denied by a majority of the

Court that a conspiracy may be prosecuted in the jurisdiction where an overt act has been committed, whether the conspiracy was originally entered into in that jurisdiction or some other.

"In the case of *Hyde vs. Shine*, the Court cited the cases that so held, with no intimation that it disapproved them, and said that as the indictment charged the conspiracy to have been entered into here it was not necessary to decide whether an overt act would be sufficient to give jurisdiction. Unless the whole theory of criminal agency, upon which the law relating to conspiracies rests, is to be abandoned, it is difficult to see any answer to the proposition of the common law that the act of each is the act of all, as much as if all were present, acting with the common mind and purpose which planned and provided for the Act.

"If a man stands outside of the District of Columbia and therefrom fires a revolver at a man within the District, and kills him, he does the killing within the District of Columbia as much as if he stood on the soil of the District when he fired the shot. For all the purposes of the law he travels with the bullet which he sends into the District.

"If these defendants got together in California and planned to defraud the United States out of its lands by the means charged in the indictment, and in pursuance of that plan sent Dimond 1179 here to get the titles from the Government, they were acting within the District of Columbia as much as if they had come here and done the thing themselves.

"The same is true of any overt act, within the proper sense of that term, which was performed within the District of Columbia.

"Accordingly the motions, so far as this ground is concerned, must be denied.

"There is a motion in behalf of the defendant Schneider to take the case from the jury so far as he is concerned, on the ground that he is relieved from liability by the statute of limitations. This motion proceeds upon the theory that there is no evidence tending to show that Schneider committed any overt act within three years prior to the filing of the indictment, and that without such an overt act the prosecution cannot be maintained against him.

"It is contended on the part of the Government that there is evidence tending to show that he took an active part within the three years, particularly the evidence by the so-called Carpenter papers and the so-called confessions of Schneider.

"As far as the Carpenter papers are concerned, the Court is not prepared to hold that they furnish any evidence from which the jury would be justified in finding that Schneider participated in the conspiracy, if there was any, within the statutory period. So that as to Schneider these papers may be treated as not in the case.

"Referring to the so-called confessions, the Court has already held, in admitting them in evidence against Schneider alone, that 1180 they might be used by the jury as evidence that Schneider participated in the conspiracy within the statutory period, if they find from the whole case that the conspiracy existed and that he was a party to it before that period.

"This would furnish a sufficient reason for denying this motion

so far as Schneider himself is concerned; but inasmuch as the confessions are not admissible against the other defendants, and consequently the other defendants could not be convicted of conspiring with Schneider on the strength of these confessions, it is proper to consider and decide whether it is necessary that Schneider should have personally performed any overt act within the statutory period in order to justify a verdict based upon a conspiracy existing between Schneider and the other defendants within the three years.

"This question has been fully argued at various stages of the trial, and has been long and carefully considered by the Court. In the opinion of the Court the question is to be determined by the same principles which determine the question of venue.

"If A, B and C enter into a conspiracy to do certain things which are to require more than three years for their execution, A to do one part, B another and C another still, and if thereupon A does his part and remains quiet thereafter; whereupon B does his part and then ceases to act; and finally C does his part, and consummates the plan and purpose of the conspiracy, A's silence and B's silence after

1181 having performed their respective parts may be entirely consistent with the continuance of the agency with which they had clothed C; and the mere fact that when C does his part

it is more than three years since A did his part, cannot prevent the act of C being the act of A. It is still a question of agency, and if A is liable he is liable not alone by reason of what he did more than three years before, but for the reason of what C now does, by virtue of the authority A gave him, and it is A's act as much if he were present performing it.

"The real question is whether there has been any revocation of the agency, and that is not a question of the statute of limitations, but a mere question of proof.

"Applying these principles to the present case, if Hyde, Benson and Schneider conspired to get titles from Oregon and California by fraudulent practices, and thereafter palm them off on the United States in exchange for good titles, and Schneider was to perform his part by assisting in procuring the titles from the States, and Benson and Hyde were to do their part by procuring the exchange of the State titles for the United States titles at such time thereafter as they should be able to do so, the scheme contemplating transactions covering a series of years, the mere fact that Schneider after procuring the titles from the States took no further active part in the conspiracy has no necessary tendency to show that he had revoked the agency that he had given to Benson and Hyde.

"On the contrary, it would be entirely consistent with the very plan of the conspiracy. Although the conspiracy must be alive and active within three years, we may go back of that period to 1182 find the proof of the agency, and from what transpired back of the three years it may be inferred and found that the acts performed within the three years were performed with the authority of persons who had not themselves actively participated within the period of limitation.

"Consequently it will be for the jury to say upon all the evidence

bearing upon the point whether acts that were performed within the three years were overt acts of the conspiracy to which Schneider was a party, and from which he had not withdrawn in any such way as to revoke the agency he had created.

"There is also a motion to take the case from the jury as against Schneider, and a like motion to take the case from the jury as against Dimond, upon the ground that Schneider and Dimond were mere employés for hire, and not sharers in the profits of the conspiracy; but this is an objection which if valid, would lie against the sufficiency of the indictment itself, since the indictment charges this very thing—namely, that they were employés for hire only. The only question now to be considered is whether the evidence tends to support the indictment. Consequently this motion must be overruled.

"There are motions to strike out various portions of the testimony. For example, there is a motion to strike out all evidence regarding Schneider's operations in Oregon in the year 1898, on the ground that there is nothing to show that Benson had anything to do with them or that he was ever chargeable with notice of the manner in which these titles were procured.

1183 "So far as Benson is concerned, it is only necessary that he should have had knowledge or notice that the titles were fraudulent. It is not necessary that he should have had knowledge of the precise defects in these titles.

"The court is satisfied that there is evidence from which the jury would be justified in finding that Benson had notice that these titles were fraudulent, if, in fact, they were fraudulent.

\* \* \* \* \*

"It is said there is no evidence to show that Schneider knew that the operations were under the Act of June 4, 1897; but so far as he is concerned there is evidence that he understood this, in the language of the Holsinger report, which he declared to be true, especially in the first and final paragraphs thereof; and there is other evidence on the same point which, in the opinion of the Court, is ample to carry the case to the jury.

"I think evidence of that sort is to be found in the testimony of Miss Kincaid, which it seems to me tends to show that in the period between the enactment of the law of June 4, 1897, and November, 1897, when she left the office, it was perfectly understood by the clerks in the office that the operations were under the Act of June 4, 1897, and were being conducted exactly as those before the passage of that Act had been conducted under the State laws. Mr. Schneider was there. He furnished her data to fill in some of the papers; and, as a matter of fact, it is inconceivable to me, when we consider the relations between Schneider and Hyde, and the fact that this

1184 law became a law and was being acted under in Hyde's office for more than a year before he went to Oregon, that he did not understand that the office of Mr. Hyde was proceeding under this act to make exchanges under the act.

"It is also argued that there is no evidence that Dimond knew

that he was acting in the interest of Benson, or that Benson and Hyde had united to perpetrate the frauds alleged; but if we are to assume, as the jury may find, that Dimond is the author of the anonymous letters, there is evidence tending to show that he knew this fact, if fact it was.

\* \* \* \* \*

"Without passing in detail upon all of the various grounds which have been urged to the effect that there is no evidence to support some of the essential allegations of the indictment, the review of the testimony in argument and the Court's own study of the evidence has satisfied it that the case cannot properly be taken from the jury. It seems to the Court that there is evidence fairly tending to support the indictment as against all the defendants.

"Accordingly all of the motions will be overruled and exceptions duly noted in behalf of all of the defendants."

Thereupon, counsel for the defendants stated that so far as the motion to take the case from the jury as to any of the defendants is concerned, as evidence would be offered on behalf of the defendants, or some of them, no exceptions would be asked at that time; but that the several motions would be renewed at the close of all the evidence.

1185 During the argument on the foregoing motions, counsel for the defendant Dimond stated to the Court that he claimed there was no evidence in the case to show that such a conspiracy as was charged in the indictment was either formed or carried out in the District of Columbia, whereupon the following occurred:

"The COURT: I do not understand that the Government claims that they were ever here and formed any conspiracy here; but I understand they rely upon the theory that any overt act performed here brought the conspiracy here.

"Mr. VANDER VEER: But I claim that they are bound to show that the conspiracy was organized and made effective here.

"The COURT: Yes, I know; but I do not know that they claim that they can prevail here except on the theory that it is sufficient to show an overt act here. Is that right?

"Mr. BAKER: That is our position, if the Court please.

"The COURT: They stand on that theory entirely. If that theory is wrong, of course they fall."

1186 EVIDENCE ON BEHALF OF THE DEFENDANTS.

*Philip M. Lilienthal.*

Direct examination.

By Mr. CAMPBELL:

I have been in the banking business in San Francis- California, thirty-eight years. I have known John A. Benson twenty-five years. I know O. T. Zinns. He has been a clerk in our bank—the Anglo-California Bank—a very long time. I am one of the managers of the bank.



By Mr. CAMPBELL:

The first part of the second paragraph at page 746 should read as follows, instead of as stated:

I never presented a paper in blank to be signed by anybody in my life.

"Q. Did you ever present to Mr. Otto T. Zinns a paper to be signed, folded in a manner something similar to this (indicating) where the contents of the paper was concealed? A. I would ask no man to sign such a paper.

"Q. I say, did you ever present it to him? A. I have no recollection of such a thing. I have no recollection of ever having presented it."

I do not recall ever saying anything to Mr. Zinns in relation to State land business. In a general way I have had monetary relations with the defendant Benson in relation to lands. I 1187 cannot remember any particular transaction. All of my books up to the time of the earthquake are destroyed. I have no private checks now, back of the earthquake. Everything was destroyed. It would be very difficult to give the extent of the business dealings between Mr. Benson and my bank. I have known him a great many years, and he has done considerable business with the bank. Land scrip has come to the bank to be delivered to Benson against payments, and scrip has been sent out for collection, the proceeds to be credited to Benson. Mr. Benson was a depositor at our bank.

Cross-examination.

By Mr. BAKER:

I have no recollection whatever in regard to Mr. Zinns finding an application for school land; and no recollection of the transaction at all.

*Henry Hewitt.*

Direct examination.

By Mr. CAMPBELL:

Dealer in lumber and timber lands. Have lived at Tacoma, Washington, for twenty years, and have been engaged in this business for twenty years. I was engaged in this business in Wisconsin and Northern Michigan, prior to going to Washington.

Have known the defendant Benson eight or nine years. About a year and a half before 1900 I made a contract with Benson who claimed to be the agent for C. W. Clarke, for the purchase 1188 of some land scrip. The selected land in that transaction was in township 27, Range 10; Willamette Meridian, State of Washington; and Township 1606, Pierce County; and Township 1506 in Pacific County, and, I think, Township 2208 in Pierce County, possibly, or maybe King—I am not sure. There was one quarter section and forty acres in Township 1603. In the other Townships I should think about 3600 acres. Under my contract I

was not to pay for the scrip until after the Land Office accepted the scrip, and then I was to pay twenty-five per cent.

About the year 1903, Mr. Benson telegraphed me from Washington, D. C., to Tacoma, Washington, that he wanted to see me. Afterwards, I saw him in Tacoma. This land had been approved, and I had paid part of the amount before seeing him. When I saw him, he advised me not to pay any more on the land; and since that interview with Mr. Benson, under his advice and direction, I have not paid any more on the land. The land in question is embraced in application C. W. Clarke, No. 2904, and is described as follows:

"No. 2904, applicant C. W. Clarke, location S.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , of Section 10, S.  $\frac{1}{2}$  and N. E.  $\frac{1}{4}$ , Section 26; all of Sections 14, 22, 28, and 34, Tp. 15, N. R. 6 W. W. M."

Under the same agreement with Mr. Clarke, I also took some land in Sections 30 and 32, and under Mr. Benson's advice, I paid no more for those lands. I cannot fix the exact date of Mr. Benson's conversation with me in Tacoma, after his telegraphing me 1189 from Washington, D. C. It was between 1902 and 1903.

I might have kept the telegram, but I did not bring it with me. In that conversation, Mr. Benson told me there were grave questions about the base land, and that he was going to dissolve all of his relations with Mr. Hyde on that account.

Cross-examination.

By Mr. BAKER:

I made the contract with Mr. Benson personally, but Mr. Clarke signed the contract and I sent the money to Mr. Clarke. I am very sure Mr. Benson did not sign the contract. There was a statement in the contract that I was not to pay unless title to the land was good—we expected land men, homesteaders, and timber claimers to fight us; and in case I did not get the lands I was not to pay for them. I paid \$4.50 and \$5 an acre for the land. Do not remember the date of the contract, but it was a little before 1900, I think.

At this point it was agreed between counsel that at the taking of testimony in New York City in January, 1904, in the matter of the application for Benson's removal to the District of Columbia, after this indictment was found, on the examination of Mrs. Belle A. Curtis by the Government, she stated as follows:

"Q. You stated that you knew whether or not John A. Benson and Hyde were interested in these state lands referred to and the Government lands to be exchanged. Now will you state how you know that? A. Well, there was a great deal of communi- 1190 cation between the two offices; Mr. Benson was in our office a great deal, and there was a contract drawn up between the two men.

"Q. Who drew the contract? A. It was dictated by Mr. Hyde to me.

"Q. To you? A. Yes sir.

"Q. And did you write it out? A. Yes sir.

"Q. Was it afterwards signed? A. Yes, sir; it was signed by Mr. Hyde and Mr. Benson and each one had a copy."

It is further agreed that, on the next day, Mr. Campbell, representing Mr. Benson, produced the contract which is in evidence here dated September 12th, 1898.

*John D. Ackerman.*

Direct examination.

By Mr. CAMPBELL:

I reside in Oakland, California; have resided in California something over 52 years; am a dealer in land scrip—an attorney before the land department; and am a mining man.

Scrip is a term that we apply to state lieu selections, or forest lieu selections, or soldiers' additional selections, or Valentine or Porterfield, or any of those means of obtaining title to Government lands. Scrip was a means of obtaining title to land, without actual settlement thereon.

1191 I have known the defendant Benson for over twenty years, and the defendant Hyde for about the same length of time. Know the defendant Dimond slightly. Knew him by sight in San Francisco for a number of years; but had no personal acquaintance with him except during the last few years.

Know the defendant Schneider very slightly. In the years 1897 and 1898, I used to meet Mr. Schneider on the ferry boats crossing from Oakland to San Francisco, and I knew who he was.

I was engaged in the scrip business in the years 1897, 1898, and 1899; and during the years 1898 and 1899 I purchased various reserve lieu scrip. In 1898 I must have handled 20,000 or 25,000 acres. I purchased it in the forest reserves of Arizona, California and Oregon.

I purchased my scrip in the San Francisco Forest Reserve Mountains in Coconino County, Arizona. In California, I bought it in various counties—Ventura County—Toulumne—Merced and Madera Counties—in fact, in all of the counties wherever there was a forest reserve. I bought several thousand acres in the Cascade Range Forest Reserve, from a company having headquarters in San Francisco. In 1898 I bought between — thousand and three thousand acres in Arizona, that cost me \$1 and \$1.25 an acre, plus 25 cents an acre to my agent who was there making the purchase for me—in other words, I paid \$240 for a quarter section. That included a certain certified abstract of title for each purchase of land I bought. I bought a good deal, but cannot tell how much.

1192 It was included in San Bernardino County, Los Angeles County, Ventura County, and I paid for that from \$1.50 to \$1.75 an acre, with certified abstracts. I also purchased in Toulumne County, and some in Madera County.

It was later than 1898 that I made the purchase in the Cascade Range Forest Reserve. I think I paid \$2.75 an acre for some, and a little later, I paid as high as \$3.12½. I got from the persons

from whom I purchased this scrip, in some cases simply a deed from the owner with an abstract of title. In some cases I bought it where they had already surrendered it to the United States, and in that case I got an abstract of title, a deed of relinquishment, and a power of attorney to select, and a power of attorney to convey. The latter two papers were executed in blank to a certain extent.

"Mr. BAKER: The Government does not claim that, if any of these papers were in blank, it was any evidence of fraud, because we have not attempted to show the condition of those papers. We took it that they were not in issue, except in cases where there were fictitious persons.

The COURT: That seems to be clear. In any papers subsequent to the passing of title from the State, blanks were not to be regarded as any indication of irregularity or fraud.

Mr. CAMPBELL: With that understanding I will not pursue that inquiry."

The WITNESS resuming: Papers of this kind (referring to the papers going to make up "scrip", including the powers of attorney executed in blank just referred to by the witness),  
1193 were included in the scrip, and this scrip was on sale in San Francisco by the various land agents and attorneys.

I know there were dealings between land attorneys and land agents in this scrip in San Francisco. I have bought lots of it, and sold lots of it. The dealings in the years 1898 and 1899 ran into the thousands of acres.

During the time of my acquaintance with John A. Benson, he was what we termed a general land agent, handling scrip and doing a general land business in the State of California and outside of it. I knew that he bought and sold for other people. In any of my dealings with Mr. Benson in the years 1898 and 1899, he never took from me an assignment of any scrip in his own name; and when I bought from or through him, none of the scrip was standing in his own name; and he did not personally make any conveyance or assignment to me. Prior to the fire in 1906, Mr. Benson's office was at the corner of Sacramento and Montgomery Streets, and had been there for several years.

I have had experience in making applications for persons who desired to take up State lands, and also in producing for them the affidavits of two persons. I knew half a dozen land surveyors who frequented Benson's office. I became acquainted with them when I was chief clerk of the United States Surveyor General's office. I knew they were persons who had contracts with the Government for surveying lands in the State of California. Among these was George A. Perrin, John Rice, Mr. Burden, Mr. Steve Taylor, W. F. Riley, James M. Glover, W. F. Benson, Mr. Hanson and  
1194 others. These men made their headquarters principally in the office of the defendant Benson.

Prior to the time Benson became a land agent, he was a surveyor. Ordinarily, when I desired to get the affidavit of two witnesses as to the character and quality of the land, I generally sent for the

applicants over to Mr. Perrin or some of those surveyors who made their headquarters in the office of the defendant Benson. When I would do this, if I had the data, I would give the applicant a blank and the data and he would go over to these surveyors and see them. Sometimes I would tell an applicant to go around to the defendant Benson's office and go to the clerk and find out where the applicant could get one of the surveyors to make an affidavit.

I remained in the land business down to and including the year 1902.

During the time I knew him, the defendant Hyde was in the general land business—the same business. I knew Mr. Hovey, Fred Lake, Richard M. Lyman, and others, who were also engaged in the general land business.

In the year 1902 there was a custom between the various land agents of filing applications for each other in the State land office. We often filed for one another. That is, we would transmit them through the mails, or, if one agent was going up to the land office, he would take his own applications as well as those of other agents. During the year 1902 John A. Benson's office filed state applications for me. Parties would leave applications with me to be filed, 1195 and I would have Benson's office file them; and I know Benson filed some for Stewart, the Land Attorney who had an office with me.

I have examined List C filed by the Government in this case, and I find that this list shows some applications which were filed by Mr. Benson for me. In list C, one of the files in the case, I recognize the following applications as having been filed by the defendant Benson for me:

No. 2045, in the Humboldt Land District, in the name of Charles H. Purdy.

No. 2041, Roy Ackerman.

No. 2047, Walter Hall.

No. 2073, H. L. Braphaver.

No. 2076, Charles Purdy.

No. 2081, Frank Selz.

No. 2097, Albert S. Seibold.

No. 2106, E. O. McDougal.

No. 2121, John P. Mahoney.

No. 2901, Charles A. McDougal.

I know every one of these people personally. They were my clients; and Benson filed these applications for me, except John P. Mahoney, and he was the client of W. A. Stewart, who had an office with me. I know that Mr. Benson filed other applications for Mr. Stewart; but I am not able to state the names.

These filing receipts would be returned to Benson's office, and I would get them from him and send them to the applicant. It was the same way with respect to the approvals. These certificates of purchase in cases filed by Benson for me would usually be sent 1196 to Benson's office, and I would get them from him. It was the same way with Mr. Stewart. Other land attorneys have made these filings for me. There was the same practice prevailing in

relation to filing the receipts, approvals and certificates, and the same practice with respect to the receipts being sent to those attorneys who filed them, and then being sent to the attorneys for whom the particular attorney filed them.

In 1902, I purchased about 5,000 acres of land involved in the Aztec tract, and in 1903 I took a greater interest; that is, I put in more money, and had an understanding and agreement with Benson that I was to get a certain interest out of certain sales that were made. In making these arrangements with Benson in reference to the Aztec tract I did not consult with Mr. Hyde about the matter at all.

Referring to the diaries—the daily books kept by the State Land Office at Sacramento, I have found that there were errors in these books with respect to my own filings. My filings were sometimes credited to others, and others credited to me. That is, my filings were sometimes put on these diaries as having been filed by others, when they should have been put on there as having been filed by me, and vice versa. When I sent my applications in, I would sometimes send them by mail and sometimes would take them in person; and the error in the diaries would be with respect to both of this class of filings; both when I sent them by mail and when I took them in person. I suppose these errors would amount to a dozen or fifteen in my practice. I would find out these errors by having the wrong papers sent me. In examining these diaries I noticed the one under Tuesday, July 16, 1901, No. 3691, C. E. Horton—the filing of this is credited on this book to Mr. Benson. Neither Mr. Benson or Mr. Lavenson had any interest in it whatever.

#### Examination.

By Mr. WORTHINGTON:

The names which I enumerated to Mr. Campbell a few moments ago of cases which were mine, although the filing of them was credited on the book to Mr. Benson—in all these cases Mr. Benson had no interest whatever except that he filed the applications for me, under the practice among the attorneys there. This practice of one land attorney filing applications for another had been going on for several years. As the years went by, it grew more general among the land attorneys. In speaking about the amount I paid for scrip, the value of the forest lien scrip increased after the Act of 1897; the demand increased, and the supply decreased. Consequently the price advanced. That is why I had to pay more for scrip bought after that time. What we call state selection scrip was dealt in extensively; always has been ever since California became a state, but more extensively since the original forest reserve act of Congress in 1891, and between 1891 and 1897 the state scrip was very largely dealt in. During this period, Mr. Hyde, and all the other land attorneys were dealing largely in this scrip.

Both Mr. Hyde and Mr. Benson had copies on the records from the state land offices in their own offices. Each of them had a separate set of records of their own, for I have examined them in each office. They got their information separately from the surveyor general's office, and they kept them right up to

date. They had daily reports, the same as the rest of us. I used to keep the daily reports myself, but I never kept them up very close. When I wanted information conveniently, I would send either to the office of Mr. Hyde or to Mr. Benson, and have their records looked at. It was more convenient than going to Sacramento. With respect to those cases that I went over in list C and testified that Mr. Benson had no interest in, it is a fact that Mr. Hyde had no interest in them, either.

#### Cross-examination.

By Mr. BAKER:

I have heard the term "dummy" spoken of lots of times, but I never found anybody yet that could give me a definition of it. The men whose names were mentioned in these applications that were filed by Benson's office for me, were not "dummy" applications, which I obtained for the defendant Benson. When I would send my applications to Benson's office to be filed by him for me, I would send only the filing fee \$25 in each case. I knew personally all of the applicants for whom I filed these applications; in fact, one was my daughter. She did not know, and had never seen the land that she had applied for. She asked the two surveyors about the character of the land, was told by them of its character, and she made the application. She received information from these parties as to whether the land was occupied or not—of its character.

1199 With respect to some of these applications that were filed by Benson for me, I knew that the applicants got their land, for the certificates of purchase were in my office, and some of them are holding them today. Some of them were surrendered after they came into the forest reserves.

The 20,000 acres of land which I purchased as I have stated. I purchased from a corporation which derived its title from the Military road grant, made by Congress away back in the 60's. That was not school land. Some of it I purchased from another party, and that was swamp land.

In 1898 and 1899 I bought a great many certificates of purchase in forest reserves. I had an agent in Arizona named A. E. Macomber. He was located at Flagstaff. He was what was known as a timber cruiser, from Saginaw, Michigan. He looked out for tracts of land for middle-west lumbermen to purchase. The land I bought from him has been cut over—what we call stump lands, and he got them for \$200 a quarter section, and added \$40 to it for his trouble. He bought from various people who had cut the timber off, and just sold the land again without any timber on it. Those were homesteads—not school lands, for they did not have any school lands in Arizona—that is a territory.

There might have been some school land in the tract I bought in the Cascade Range. There were two tracts and all together made some seven or eight thousand acres.

I bought seven or eight thousand acres in the Cascade Range, and paid from \$2.75 to as high as \$3.12½ an acre.

In 1898 I bought school land scrip in California for \$1.50, 1200 with complete title. I bought some from a woman by the name of Anna Bates. I remember that very well because I had to probate it before I could get a good title. There were 640 acres, and it cost me about \$900. I can't tell you any other names of persons of whom I bought school lands. I never went out to get people to file claims or to file applications. As a rule, I bought old certificates of purchase that I could get a patent for. In our State, a certificate has to be twelve months old before you can get a patent on it, and I bought what commodities like those I could handle immediately, and I bought certificates of purchase from people who had already received them.

Coming down to my dealings in school lands and forest reserves after the passage of the Act of 1897, I bought certificates of purchase that were old enough to get a patent on. I filed applications for clients for school lands after the Act of 1897. I file a good many of them today. In 1898 you could buy plenty of school land scrip in California from \$1.40 to \$2. In 1899, it advanced somewhat. In that year, I paid as high as \$2.75 for some of it.

As to the land that I paid \$1.50 an acre for in 1898, I sold the scrip at prices ranging from \$3.25 to \$3.50 an acre if I had to cut it up into forty acre pieces and get an abstract with each one.

I think Benson first consulted me about the Aztec contract before 1901. Afterwards I bought an interest in it from him. I first bought a tract of what we call "restricted" for \$2 an acre. Then I sold a lot of it. I got a commission out of the "restricted."

1201 I do not know how much of it; I guess four or five thousand acres, I must have handled. I paid \$4.25 for some of the unrestricted. I had nothing to do with the original contract of buying the property from the Aztec people. What I bought from Benson, I sold to other people on my own account. I bought some five thousand acres from him direct, which came right to me, and outside of that, I sold four or five thousand acres for him, and received a commission for making the sale. All the land that Benson bought from me he always had assigned to C. W. Clarke, or somebody else. The only reason he ever gave me was that C. W. Clarke gave him the money, generally. Benson never gave me any other reason for not taking it in his own name. He never told me that he did not want to appear in the matter on account of some difficulty that he had with the land office; never knew of any custom in the state land office by which one man would get the filing receipt, and another the approval. In addition to Mr. Hyde and Mr. Benson filing applications for me, Mr. Lyman has filed some.

Some of the parties for whom I made applications abandoned all of their lands because they said it was not worth anything to them, and others took up forty acres or eighty acres and got a patent on it. They said it was useless to go any further, because they could not get any land adjoining it, as it was in a reserve and an isolated tract of 640 acres in a reserve is good for nothing. They could have received state lien lands for the lands, but I know some of them just abandoned them—I abandoned some myself.



Mr. Frank Selz was a client of Mr. Stewart. I do not know whether he abandoned his selection or not; could not tell without looking at the record. I think, afterwards, he got a certificate of purchase for certain portions of the land he applied for. I do not know why Mr. Selz abandoned to 80 acres.

I could not tell how many papers I filed for Mr. Hyde—but quite a number. I do not see any in the diaries here that I have been examining. I would file some applications at the State Land Office for Mr. Hyde, when I would be going up there. Sometimes I would get the filing receipts, but not often, because I would direct them right then and there and send them to Mr. Hyde. I have never looked at these diaries before. I could not tell how many papers I filed for Mr. Benson.

I have known Walter K. Slack for ten or fifteen years.

Redirect examination.

By Mr. WORTHINGTON:

Referring to these applications which are credited in these diaries as having been filed by Mr. Benson or his office, and which are for clients of mine, the applications in which were filed by Benson's office for me—these people were all my clients. Charles H. Purdy is dead. He lived in Oakland; he died about two years ago.

Miss Zoe Ackerman is my daughter.

Walter Hall is a traveling man. He used to be a druggist. He is an old school mate of mine.

H. L. Branthazer has resided in Berkeley, California, since the fire.

1203 Charles Purdy has a farm and lives in Oakland most of the time.

Frank Selz was a client of Mr. Stewart, who had an office in with mine. I do not know where he lives. C. O. McDougal worked around our city hall most of the time, and was in city politics.

Charles A. McDougal was a friend of one of the other men, but I do not know what he did.

There was a decision of the Secretary of the Interior, or of the Commissioner of the Land Office, which affected the question of the value of these various lien scrips. This decision was rendered sometime in 1899, and was to the effect that unsurveyed land could be entered with forest lien scrip—that is, a person who had the right to make a selection could go on land that had not been surveyed, and that gave it an additional value.

For years back, sometimes I would be in Mr. Hyde's office once a week, and sometimes two or three times a month. That would cover from 1897 down to date; because I was buying from and selling to Mr. Hyde forest lien.

I know who the defendant Schneider is. I do not recall ever seeing him in Mr. Hyde's office. I used to see him once in a great while on the ferry, crossing from Oakland to San Francisco.

Prior to the Act of 1897 there was a large business in which land agents were engaged in getting lands from the State of California—

along in the '80's there were a great many school sections filed on by everybody. I attended to the business for a great many people. The business continued more or less from that time down, and still continues."

1204 "Q. Now, do not answer this question until you see what is said about it: I want to ask you, during all the time you have been connected with the business, what has been if you know, the general understanding of those engaged in that business, whether as land agents outside of the Land Office or as officers of the State in the Land Office, as to whether or not it was required of a person who made application for land and stated facts as to the occupancy of the land and its character that he should know that of his personal knowledge, or whether it was sufficient if he knew it from information and belief

"Mr. BAKER: I object.

\* \* \* \* \*

"Mr. WORTHINGTON: I offer to show that the universal custom of persons outside of the State Land Office engaged in the business, and the universal understanding of those in the Land Office who represented the State, was that of such persons personal knowledge was not required.

"The COURT: This man cannot know what the understanding in the office was. I think your offer should be co-extensive with a proper answer to the question you have put; and I will rule upon the other when somebody comes who knows.

"Mr. WORTHINGTON: This man came in contact all the time with them.

"The COURT: He does not know what they thought about it.

"Mr. WORTHINGTON: Let me change the offer, then—

1205 that as to the custom of land agents,—

"The COURT: The question you asked him was not about the custom; it was about the understanding.

"Mr. WORTHINGTON: Well, I will ask him now what the custom was. I will ask him if he knows what the general custom was, and if so, what it was, as to land agents preparing applications for state lands during the years covered by his experience, as to having the applicants make the affidavit as to the question of occupancy and as to the character of the land from their information and belief, and not necessarily upon personal knowledge. \* \* \*

I offer it for the purpose of showing, in connection with the other circumstances of the case, that the mere fact that Mr. Hyde had applications put in in that way, or that Mr. Benson had, did not tend in any wise to show that they were acting in concert, since they were only doing what all persons engaged in the business were doing; and it would not follow at all, therefore, that they were in collusion about it.

\* \* \* \* \*

"The COURT: According to that theory, it might be shown that the others forged names and used fictitious persons, to show that Hyde and Benson were not necessarily acting in concert because other people perpetrated the same frauds.

\* \* \* \* \*

1206 "Mr. WORTHINGTON: Very well; I will reserve an exception. One moment: I offer to prove by him also that the fact that this was the custom for twenty or twenty-five years prior to the finding of this indictment was known to the officers of the State Land Office, and was acquiesced in by them.

"Mr. BAKER: We object to that.

"Mr. WORTHINGTON: I offer the two things together.

\* \* \* \* \*

"The COURT: It is sometimes easier to make an offer, you know, than it is to prove things. I have seen offers made, and then seen the witness unable to testify. But we have to take the offer. I do not see how he could know. He might guess so. I do not think it would be a matter of knowledge on his part. I cannot conceive that he could know it; but I will exclude this.

To this ruling of the Court counsel for the defendants, and each of them, duly excepted.

*Ralph Van Gundy.*

Direct examination.

By Mr. DONALDSON:

I am a cowboy on the Orestimba Ranch, and was continuously from the spring of 1896 up until 1902. I left in April, 1902, and remained away for about three years, and returned to work there in 1905, and have been continuously employed there since.

I know T. B. Neal. He was cattle foreman on the ranch when I went there in 1896. I met the defendant Schneider within  
1207 three weeks after I went to work on the Orestimba Ranch. I was on the ranch all this time. During the years 1896 and 1897 Mr. Schneider was on this ranch about half of the time, as near as I can remember.

The years 1897 and 1898 were dry years. In the spring of 1898, we gathered up about half of the cattle on the Orestimba Ranch, amounting to about 800 head, and moved them to the Cornwall Ranch in Contra Costa County. The Cornwall Ranch is about 125 miles from the Orestimba Ranch. The cattle were shipped by train. I drove them myself from the Orestimba ranch to the Gilroy station. If I remember aright, Mr. Schneider and Mr. Neal went with the cattle from the Orestimba to the Cornwall ranch. The cattle remained on the Cornwall ranch from about June, 1898, until May, 1899, when they were brought back to the Orestimba ranch. Mr. Schneider came back with the cattle to the Orestimba ranch, and from May, 1899, down to the first of December, 1901, Mr. Schneider was on the Orestimba ranch most of his time, except that two or three days at a time he would be away, and besides other times, when he went to Arizona to buy cattle for the ranch. He made a trip to Arizona in the fall of the year, about October or November, 1899. He was gone a month, or probably six weeks, and when he came back he brought a trainload of cattle. He went to Arizona again in the fall of 1900, and brought back another train load of

cattle. On the second trip he was gone about the same length of time.

There were about 800 head, or a thousand head of cattle in a train-load. Early in the season of 1901—June or July—he went  
1208 down to Arizona to contract to purchase some cattle, and came back to the Orestimba ranch, and along about September or October, he made a trip to Arizona and returned to the Orestimba ranch with another trainload of cattle, and immediately he went right back to Arizona and immediately brought another train load of cattle to the Orestimba ranch.

I think it was in November, 1901, that he brought the last train-load of cattle from Arizona to the Orestimba ranch. He left the Orestimba ranch for good about December 1st, 1900.

In the year- 1896 and 1897, Mr. Schneider spent about half his time on the Orestimba ranch. During the first part of the year 1898 up until the time they moved the cattle from the Orestimba ranch to the Cornwall ranch we was there most of the time; that is up until June, the time the cattle left. He didn't spend but very little of his time there from the fall of 1897 until the spring of 1898. From June, 1898, from the time the cattle left until the spring of 1899, when they came back, Mr. Schneider was away a portion of his time—about half his time. He would go backward and forward from one ranch to the other. From May 1899, when the cattle were brought back to the Orestimba ranch, down to the 1st of December, 1901, when Mr. Schneider left for good, he spent most of his time on the Orestimba ranch—he was there most of his time, excepting for a few days that he would be away, probably three or four days at a time, and the times that he went to Arizona to buy cattle. He was only away from the Orestimba Ranch two  
or three days at a time during that period—except his visits  
1209 to Arizona to buy cattle. When I went there in 1896, we did not have as many head of cattle as we did later on. The cattle that came from Arizona were put on the Orestimba ranch, and during this period the head of cattle increased continually.

I saw T. B. Neal before I left San Francisco to come here to testify. He was in bad condition. He was not able to travel.

I know J. B. Frontaine. He worked on the Orestimba ranch during the time I was there.

"Q. You have said that during the year that Mr. Schneider was away most of the time, he was backwards and forwards between the ranch and the Cornwall ranch, have you not? A. Yes.

"Q. The year the cattle went away? A. From the spring of 1898, until June—

"Q. You said he was away most of the time; but you said something about his being back and forth. A. He was away the most—or, he was away from 1898, in the spring, until 1899—that is, the most of the time. He was backwards and forwards between times."

I know that from the spring on 1898 until 1899, Mr. Schneider was backwards and forwards from the Orestimba ranch, because he would come on the ranch where we were at Orestimba. When he would leave the Orestimba Ranch he would tell us that he was going to the Cornwall ranch, and that we could communicate with him

there. We would know that he was on the Orestimba ranch, because I would communicate with him by telephone from the different camps on the ranch, and, besides, I would be backward and forward from one camp to another and see him. I would, myself, have communication with him over these telephones when I was in different parts of the camp, and at times, I got instructions from him.

I know every foot of the land around this Orestimba ranch. It is all grazing land. There is nothing but timber and grazing lands anywhere around this ranch. Mr. Schneider was the superintendent of the ranch.

Cross-examination.

By Mr. BAKER:

I arrived in Washington on the 15th of May. I have talked with Mr. Schneider about the ranch, and things that were on the ranch. I have talked with Mr. Donaldson about the date when Mr. Schneider left Mr. Hyde's employment, about the first of December, 1901.

In 1896 and 1897, I saw Mr. Schneider most of the time on the Orestimba Ranch. During the years 1896 and 1897 Mr. Schneider would be on the Orestimba ranch probably a month, and then would probably be away a couple of months. During the fall of 1897, to June 1st of the year, 1898, I either saw or communicated with Mr. Schneider on the Orestimba Ranch every few days—every week. He was there most of his time from the fall of 1897 until June, 1898, except he would probably be away a few times—a few days at a time. The Orestimba ranch was about 90 miles from San Francisco.

From the time the cattle were moved from the Orestimba ranch in June, 1898, until their return in 1899, I did not see very much of Mr. Schneider. Mr. Schneider did not tell me that he was going to Oregon. I do not know where his family lived.

1211 Redirect examination.

By Mr. DONALDSON:

I had no business on the Cornwall Ranch. I devoted my time exclusively to the Orestimba ranch, where I was working all the time. I never worked on the Cornwall ranch or any of the other ranches.

*James H. Lavenson.*

Direct examination.

By Mr. CAMPBELL:

Have lived in San Francisco all my life. I am thirty-three years old. I know the defendant Benson. I have known the defendant Hyde probably about fifteen years.

I have known the defendant Dimond probably five or six years. I have no intimate acquaintance with Dimond. I met him in the defendant Hyde's office probably not more than half a dozen times. Do not think I ever met him outside of that.

I knew the defendant Schneider. The extent of my acquaintance with him is that I used to see him occasionally when I would go into Mr. Hyde's office—I do not think more than three or four times.

I have been in the employ of the defendant Benson since 1891. First I was a young boy—an office boy for him. Later on, I took the correspondence; after I had been there ten or twelve years I had principal charge of the correspondence, and also kept the records in his office and did clerical work. I was thus engaged during the years 1897, 1898 and 1899. I am a stenographer. During the years 1898, and 1899, I was the only office boy in Mr. Benson's office. From the time I went into his employ in 1891 down to the present time, he never employed a colored boy. During the time I have known Mr. Benson, his business has been that of a land agent—acts as agent for other people acquiring and selling lands. During the years 1898 and 1899 I had no personal knowledge of the manner in which the land titles that passed through the office were acquired. In the last part of the year 1897 and the years 1898 and 1899 there was considerable excitement around San Francisco in acquiring lands; there were a great many people filing, or making applications for lands—people would stop me on the street, and at other places, and say they understood there was a proposition on foot whereby there was a great many people raking up lands, and they would like to have an opportunity to take up lands. A great many people came to Mr. Benson's office for that purpose. These people saw Mr. Benson, and he gave directions for making out the applications. In 1897 Mr. Benson's office was in the Pacific Mutual Life Insurance Building. Then he moved on the opposite side of the street to 507 Montgomery Street. In this latter office he had an office and Miss Glover had an adjoining room. On the Sacramento Street side was the large entrance office in which I had my desk, and Miss McGillan also had a desk there, and Mr.

Perrin had his desk in the same room. That was a large room, probably 25 by 50 feet. Mr. Perrin was a land surveyor, and had been for a good many years. A great many land surveyors visited Mr. Perrin there. Among them was F. F. Taylor, Mr. N. L. Burden, Mr. M. F. Riley, Lewis Cutting, J. M. Dewey, Mr. Ragsdale, John C. Rise—S. A. Hanson, George W. Baker—that is all I can remember now. W. F. Benson, Mr. Benson's brother, also was around a good deal. This room was practically the headquarters for these land surveyors—they had no offices of their own, and very often they had their mail directed to our office, and received it there. Before the defendant Benson became a land agent he was a land surveyor. There were other land agents in San Francisco besides Mr. Benson and Mr. Hyde. There was John D. Ackerman, William A. Stewart, R. M. Lyman, Fred W. Lake, C. L. Hovey, C. F. Gardner, M. F. Riley, Duncan McGee, and others. These various land agents, when they arranged to obtain the affidavit of the two witnesses as to the character of the land, would send the affidavits around to our office. Sometimes they would send them directly to the surveyors, and sometimes to my-

self, or to Miss Glover, and ask that we find the surveyors who were familiar with that part of the country, and have them execute the affidavits and generally send some little stipend, \$2.50 or \$5, apiece to get them to perform that service. When these affidavits were sent around, sometimes they would come with the description of the land already filled out in them. Sometimes they would simply send along a description with the affidavit, or the surveyors would fill up the descriptions, and sometimes at the request of the surveyors, we in

the office would fill out the affidavits with these descriptions.  
1214 Sometimes Miss Glover and sometimes myself would do this.

Miss Glover and I made no charge for this. This had been done in a great many cases in which the defendant Benson had no interest.

In the year 1902 there was a custom among land agents in San Francisco of filing applications for each other. At times, I would go to Sacramento to file applications and other agents, knowing that I was going up, would ask me to take their applications along with me, and I would do so, and present them along with those I had to take up for Mr. Benson. When I did this, Mr. Benson always wanted me to file his applications first—in case of conflict. Prior to this custom of filing applications for each other, there used to be conflicts between the various agents in filing on the same lands, or attempting to file on the same lands. On several occasions before this custom grew up, when I would be up in Sacramento myself, the land had been taken probably just the day previous by some other applicant; and sometimes I would have to wait before I could file the applications I had to present, because there were other applications that had not been acted upon; and, while the record appeared clear, when I looked it up, these other applications when they came to be filed, would cover some of the same lands.

By Mr. CAMPBELL:

"Q. From 1897 to the early part of 1903, did you know anything as to the manner in which the applications of Mr. Hyde or from Mr. Hyde's office, had been obtained?

"Mr. BAKER: I object on the ground that his knowledge is absolutely immaterial in this case.

1215 "The COURT: I do not think it would be material. I do not think any inference could be drawn from his knowledge, that Mr. Benson had no knowledge.

\* \* \* \* \*

"Mr. WORTHINGTON: The record does not show what answer it is that is excluded, and Mr. Campbell offers to prove by this witness that he, the witness, had no knowledge as to how Mr. Hyde's applications for State lands were obtained or filed, and that so far as his opportunities to know what Mr. Benson was concerned in is concerned, he did not know.

"The COURT: His testimony already is, in regard to Benson, that he did not know how Mr. Benson got his own applications, so it seems to me that your offer is a broader offer than the one Mr. Campbell made, but it is excluded, and an exception is noted."

To which ruling of the Court the defendants and each of them duly excepted.

In the early part of 1903 I made a trip from San Francisco to the State of Oregon.

By Mr. CAMPBELL:

"Q. At whose instigation? A. At Mr. Hyde's.

"Q. Will you kindly state to the jury how you came to go to Oregon at the instigation of Mr. Hyde? A. Mr. Hyde called me up over the telephone and stated—

"Mr. BAKER: I object to any conversation that took place 1216 between the witness and Mr. Hyde. It may contain a self-serving declaration.

"Mr. WORTHINGTON: The Government has offered testimony that Mr. Lavenson went up after the charges were made, up to Oregon, and had an interview with a certain person up there, and what he said. This witness is explaining how he came to go there.

"The COURT: I do not think that entitles you to show what Mr. Hyde said to him about it. I do not know what it may turn out to be. That bare fact does not entitle you to bring in a conversation between him and Mr. Hyde. There may be something that you have in mind that may be admissible.

"Mr. CAMPBELL: I simply offer to show by the witness that Mr. Hyde called him up on the telephone and said there was some trouble about some of the Oregon applications, and that he, Hyde, did not understand it exactly, and asked him if he would go up there and see the people who had made the applications and find out what was the trouble.

The COURT: That offer, as made, is excluded. It perfectly illustrates what I thought the difficulty might be."

\* \* \* \* \*

"Mr. WORTHINGTON: This evidence, it may appear further, is offered because of the claim the Government makes, that the fact that Lavenson, from Benson's office, went to Oregon to examine in reference to Mr. Hyde's cases, is some evidence tending to link the two offices together, for the purpose of showing that he went 1217 solely at Mr. Hyde's request, and why he went, and that Benson had nothing at all to do with it."

"The COURT: The offer as made is excluded."

"Mr. CAMPBELL: We offer to show that he was instructed to go up there and see the people who had made the original applications, and to ascertain the circumstances under which they made them; so as to determine whether they were real persons or not.

"The COURT: What he told him to do when he was there, I think is as admissible, perhaps, as that he sent him up; but his statements about what he knew and did not know would not be admissible."

To which ruling of the Court the defendants and each of them duly excepted as to that part of the conversation which by the ruling was excluded.

"The COURT: You may ask the witness who sent him to Oregon on that occasion, first.



By Mr. CAMPBELL:

"Q. Proceed, Mr. Lavenson. A. Mr. Hyde requested me to go to Oregon.

"By the COURT:

"Q. Did you go at all for Mr. Benson? Did he have anything to do with your going? A. No, sir; I went at the request of Mr. Hyde—except that I first received permission from Mr. Benson to go.

"The COURT: Now you may state what it was that you went there to do.

1218 "The WITNESS: I went there to interview certain parties who purported to have made applications to the State of Oregon for State of Oregon school lands.

"By the COURT:

"Q. What were you to ascertain from them? A. I was to ascertain the facts in connection with their having made applications to the State of Oregon.

Q. And the circumstances under which they made the applications? A. And the circumstances under which they made them, and to procure affidavits or statements from them.

The COURT: That is as far, I think, as I ruled upon the matter.

When I went to Oregon Mr. Benson was not in San Francisco. I called him over the telephone and got his permission to go. When I went to Oregon I saw Mr. McCusker, and Mr. Don Alexander, and Mr. Page, I believe, (the latter being one of the applicants); and probably two or three other persons, whose names I do not remember now. That was in Portland, Oregon.

I stayed in Oregon probably a week or ten days on that trip.

"A. Mr. McCusker informed me that he and his wife had each taken up a half a section of school land in the State of Oregon, and at the time they made their application they were informed and believed that it was valuable timber land; and later on they found it was away out on the sand hills, and was land of such a character that they did not wish to keep it, and that they sold. I told him I would

like to get his affidavit, and also his wife's affidavit to that  
1219 effect. I think I asked them a few preliminary questions, as to having paid a sum of money, and taking it up for himself, and so on. He stated that he had paid a sum of money and his wife had paid her money, and they had taken it for their own benefit. I asked him if he would make a statement to that effect, and he asked me if I would draw up the form of affidavit. So as we stood there at the door, I took a piece of paper out of my pocket and drew up the form of affidavit, and he took the form of affidavit and said he would consult his attorney about it, and if it was satisfactory he would make the statement or affidavit, and I could call around the following day, and he would then give it to me, or give me his answer."

I called the following day and he said he had seen his attorney, and had been advised to make no statement. He said the Government could have any information that they wanted from him. I

told him that I represented the parties who were then the parties in interest in the land. I asked him if he knew of any other persons who had made applications about the same time, and he said he did not.

"Q. Did you visit Mr. Alexander on that trip? A. Yes, sir; I did.

"Q. Did you have a conversation with him? A. I did.

"Q. Kindly state to the jury what the conversation was that you had with Mr. Alexander."

To this question counsel for the Government objected on the ground that the witness Alexander had not been asked about any such conversation.

1220 "The COURT: That may be excluded, and an exception will be noted.

To which ruling of the Court, counsel for the defendants and each of them, duly excepted.

"By Mr. CAMPBELL:

—, I saw one other notary public in Oregon, but don't remember his name.

"Q. Did you have a conversation with him? A. Yes, sir, I did.

"Q. Do you remember what the conversation was; if so, state it.

"Mr. BAKER: We object.

"The COURT: That will be under the same ruling and exception."

To which ruling of the Court, counsel for the defendants and each of them duly excepted.

The WITNESS (resuming): I also saw Mr. Long and Mr. Page (two of the applicants).

I had a list of persons to see when I went to Oregon. The list was furnished me by Mr. Hyde. I think that Long and Page and the notaries were the only people on the list whom I could find.

When I came back from Oregon, I reported to Mr. Hyde. I think that was in the early spring of 1903. The next person I told about it was Miss Glover, who was the confidential clerk of Mr. Benson. When I returned from Oregon Mr. Benson was not at home. He did not return for some little while afterwards.

1221 "There was a telephone line between the office of Mr. Hyde and Mr. Benson. It was put in somewhere around the year 1900, or 1899.

Mr. Benson began selling scrip of Oregon base lands and this telephone line was put in after he began to sell that scrip.

When Mr. Benson returned home, I gave him the result of my trip to Oregon. He asked me how I got along. I told him that I did not consider that I got along at all—that I could not find any of the parties.

Mr. Benson said that all relations between his office and the office of Mr. Hyde had ceased; and he did not want to have us have anything to do with Mr. Hyde's office at all—when we would find omissions or errors in our records. I remember asking Mr. Benson if I could not go over to Mr. Hyde's office to consult his records, and he

told me, no, that all relations had ceased and that he did not want me to enter Mr. Hyde's office. After that, the private telephone was taken out. This occurred after my return from the Oregon trip. As I recollect it, there was quite a lapse of time between my visit to Oregon and Mr. Benson's return from his trip; perhaps six or eight weeks; I cannot fix the time exactly. It was immediately after Mr. Benson got back, that this private telephone was taken out. Shortly after that Mr. Benson left San Francisco for the East.

I have no recollection of ever having seen the defendant Schneider in Mr. Benson's office. I knew that Mr. Hyde kept an account between Mr. Benson and himself. I went over that account  
1222 with Walter K. Slack to settle it; there was quite a dispute about it, and I went over the account on Mr. Benson's behalf, and Mr. Slack went over it on Mr. Hyde's behalf, and then they settled their dispute. There was no charge in that account of any salary due Mr. Dimond at that time. After the time Slack and I went over the account there was an exchange of monthly statements. Benson would render Hyde a statement, and Hyde would render Benson a statement. I cannot remember the exact time when any statement was made by Mr. Hyde to Benson which contained any salary of Dimond in it; but my recollection is that Mr. Dimond had been in Mr. Hyde's employ for some little while, and, in fact, had gone to Washington, and it was after that time before there was any charge to Mr. Benson. When these monthly statements came in to Mr. Benson, he would turn them over to me and say, "All the items that I have checked with a cross, I object to;" and I know that Dimond's items were one of the matters he objected to and marked in that way. I never took this matter up with Mr. Hyde.

After 1903, when the private telephone was taken out between the two offices, there was litigation between Hyde and Benson. It was about the amount that Mr. Hyde claimed to be due him on account of the Aztec contract. Mr. Benson refused to pay Mr. Hyde the \$13,000 or \$16,000 in notes that were given on the settlement which Mr. Slack and I had. There is a suit now pending between Hyde and Benson on these notes. These notes are not paid.

"By Mr. CAMPBELL:

"Q. Do not answer this question until the Court rules. Do  
1223 you know the reason given by Mr. Benson for refusing to pay the notes?

"Mr. BAKER: I object.

"The COURT: I think that should be excluded, and an exception will be noted.

"Mr. CAMPBELL: I propose to show that this was the same thing that was taken up between Benson and Hyde, I cannot, of course—

"The COURT: That is not what would be elicited by this question. I have not passed on any such matter as that.

"Mr. CAMPBELL: I cannot prove it by this witness—what took place between Benson and Hyde.

"The COURT: Very likely that might be admissible."

To the ruling of the Court refusing to permit the witness to answer the question, counsel for the defendants and each of them duly excepted.

The WITNESS (resuming): I rendered Mr. Hyde these monthly accounts. I do not remember any District of Columbia expenses in them. They contained the travelling expenses of Mr. Benson when he would go out to make sales.

A great many selections were made in the State of Washington. Mr. Benson's books, memoranda and things that were in his office in the years 1898 down to 1906 were all burned in the San Francisco fire of 1906, and his house was also burned.

Not more than ten or twelve applications were delivered to me personally by the officers at Sacramento. Some times when  
1224 I would file these applications for other attorneys the filing receipts would come to Benson's office. Sometimes I would tell the officers at Sacramento when I would file a paper, to whom to send the receipts; but when I filed applications for other people, lots of these filing receipts would come to Benson's office, and either I or Miss Glover would ascertain to whom they belonged and sent them around to them. Sometimes receipts would come to our office, and we could not ascertain to whom they belonged, and we would return them to Sacramento. This occurred frequently. The same thing is true of the approvals of applications and certificates of purchase.

Redirect examination.

By MR. WORTHINGTON:

I was familiar with Mr. Benson's books showing his business interests. I handled them daily. I never knew of Mr. Benson being a member of the firm of F. A. Hyde, or F. A. Hyde & Company, or having anything to do with it.

Cross-examination.

By MR. BAKER:

When I went up to Oregon I had little plats with descriptions of the land and names of the applicants. I did not have any form of affidavits with me. These are the only papers I had with me when I saw Mr. McCusker. I showed him the plats.

Mr. Hyde paid my expenses to Oregon. Benson continued to  
1225 pay my salary. I have no recollection of testifying in San Francisco to the effect that I never did mention the Oregon trip to Mr. Benson. Mr. Benson asked me about my Oregon trip, as I remember it, upon his return to the office. That was probably six or eight weeks after I returned from Oregon. As I recollect it, Mr. Benson came into the room in which Miss Glover and I had our desks and he asked me how I got along in Oregon, and I told him that I did not get along at all—I could not find any of the people up there. I don't remember the question being

asked me in San Francisco as to whether Mr. Benson put check marks opposite the Dimond expenses in the joint account. As I remember it, the first charge was \$150. per month, and later on it was \$250. a month. Then there was a suit of clothes that Mr. Benson objected to. Very often, I submitted Mr. Benson's objections to Mr. Slack, and I remember hearing Mr. Benson telephoning to Mr. Hyde objecting to Dimond's salary being in the statement.

Thereupon the attention of this witness was called by counsel for the Government, to what purports to be a part of his testimony in the removal proceedings at San Francisco in the spring of 1904, as follows:

"Q. You knew they had a joint account and they were dividing the profits on the sale of those particular lands do you not? A. I knew they were on some of them, yes sir.

"Q. On all of these Oregon lands you went up to investigate? A. No, I could not say as to that.

"Q. You did not know as to that? A. No, sir.

1226 "Q. What was that account? A. That was where they had sold lands and received money."

"Now——

"Q. Was there an account in there which showed that any part of the salary or expenses of Henry P. Dimond was charged up against Benson? A. You do not mean in that same account, do you?

"Q. No, in any account. A. Yes, I have seen that.

"Q. That showed one-half of the salary of Dimond and one-half of his expenses, charged against Benson, did it? A. I do not know whether it was one-half of all his expenses. I know there were some expenses charged.

"Q. And how much salary? A. I think it was one-half of \$250., as I remember it.

"Q. \$250. a month? A. Yes, sir.

"Q. That was during the time he was in Washington? A. I do not know whether he was in Washington or not."

And the witness was thereupon questioned:

"Q. I will ask you whether you so testified. A. To the best of my recollection that is my testimony. But if I may, I would like to make a little explanation about that.

1227 "The COURT: You may explain.

"The WITNESS: I do not think I was correct in stating that those items were charged, because the way I kept my ledger was simply to put on one side the statement Mr. Hyde rendered and on the other side of the ledger the statement that Mr. Benson rendered to Hyde."

The litigation that I refer to between Hyde and Benson arose before this indictment. Hyde sued Benson on the Aztec contract. The suit was brought in the Superior Court of the City and County of San Francisco. I think shortly after Mr. Benson suspended all operations between his office and Mr. Hyde's office. I have never

heard Mr. Benson say why the case has not been tried. The traveling expenses of Mr. Benson on his trip to sell the scrip would be charged in the joint account, and he would put in his traveling expenses when he would return from these trips. His travels would encircle the whole of the United States.

I know C. W. Clarke. His first name was Crawford W. Clarke. He was a surveyor. He was in Benson's office quite frequently. Neither W. F. Benson nor Perrin were connected in business with Mr. Benson. I know George H. Perrin. He was not a surveyor and had an office with Mr. Benson. I also knew Dr. Perrin. He was not a surveyor and did not have an office in Mr. Benson's office.

I have known Mr. Benson a great many years. I cannot say he had an office there; but he was around a good deal—every day or so. So was Mr. Taylor, unless they were out on some surveying trip. Taylor, Berdun, Riley, Cutting Dewey, Rice, Hanson, W. F. Benson,

Baker, and Perrin, all made their headquarters at the office 1228 of the defendant Benson in this large outside room, 25 by 50 or 60 feet. Miss McGillan was also in that room.

I was the office boy of the defendant Benson in 1897; later on, the office boy was named Fred Payne. He came there about 1900 and remained about three years. I am still working for Mr. Benson. When it was customary for one attorney to file for another the applications at Sacramento, the papers would all be made out.

When I would take applications up for other attorneys, it was Mr. Benson's rule to have his applications filed first. I do not know whether the other attorneys knew this, or not. My orders were personal from Mr. Benson.

In 1897, I was twenty-two years old.

#### Redirect examination.

By Mr. WORTHINGTON:

*Q.* I have no recollection of any expenses in Washington City being charged by Mr. Benson against Mr. Hyde in the joint account. My recollection is general that Mr. Benson was traveling around the country selling this base scrip. I have particular recollection that there were traveling expenses to the State of Washington, because Mr. Benson went up there frequently. I do not know what was done on Mr. Hyde's part about these expenses on the part of Benson to the State of Washington.

I was brought here under the subpoena of the Government.

1229 Recalled for further direct examination.

By Mr. CAMPBELL:

I know that there was such a notary public as M. Greenblatt. I was in his office only once, according to my recollection, and that was one time when I took quite a number of people—five or six—he had a small office on California Street, and some of them had to wait outside, until the others finished. According to my recollection, that is the only time I was ever in his office.

## Cross-examination.

By Mr. BAKER:

I never took a bundle of papers to any notary to put on acknowledgments, without having the parties present. I never took any papers from Mr. Benson before a notary public and had the notaries certify to them, without the people being present.

*Miss Clara E. Glover.*

## Direct examination.

By Mr. CAMPBELL:

I reside in Oakland, California; have resided there since the '70's, have known the defendant Benson since the latter part of 1870. I think. Am now and steadily since 1880 have been in his employ.

I am confidential clerk for the defendant Benson. Since I 1230 have been in his employ he has been a land agent—buying and selling lands for other people.

I was in his employ in the years 1897, 1898, and 1899.

Applications for land were always coming into the office. I don't know very much about Mr. Benson selling Oregon base land under a contract with Mr. Hyde. I know that he did something of that kind, but I had very little to do with it. I was more of a record clerk—making maps and attending to the records generally. There were a great many surveyors always around the office. My father was a surveyor. He and Mr. Benson were partners for a great many years. Among the surveyors always around Mr. Benson's office were my father—J. R. Glover—Mr. George H. Perrin—Mr. W. F. Benson,—the brother of the defendant Benson—Mr. S. A. Hanson, Mr. S. F. Taylor, Mr. M. F. Riley, Mr. N. L. Berdan, Charles H. Holcomb—Mr. F. A. Hanson, Mr. S. F. Taylor, Mr. M. F. Riley, Mr. N. L. Berdan, Charles H. Holcomb, James McGuire, C. F. Ragsdale, John C. Rice, G. W. Baker, and others. I cannot recall their names.

The greater number of these surveyors were United States Deputy Surveyors, and had had contracts to survey lands for the Government from one end of the state to the other, and other states as well.

Mr. Benson's office was headquarters for these men when they were in and about San Francisco. We had a very large outside room and there were tables and desks and chairs and maps there.

Most of these surveyors were elderly people. I frequently had 1231 these surveyors sign affidavits as to the character of land;

and other land lawyers in and about San Francisco would invariably come to me to get affidavits as to the character of lands—knowing that I would see these surveyors. The land lawyers would come to me or phone asking me if I had anyone around there that knew the character of certain land, giving me the description of the land. Then I would ask the Surveyors if they knew such a piece of land, giving them the description, and if they did I would have the affidavit made out—sometimes the land lawyers would send the

affidavits to me—and the affidavit would be sent right back to the land lawyers' office, made out. If the land attorney did not send me the affidavit already made out; but simply telephoned the description to me, then anyone who was idle in the office at the time would fill in the description in the affidavit; and if they were all busy I would fill in the affidavit. I have done this very often. Mr. Benson would not be at all interested in these affidavits. I would never consult him about them.

I recollect the trip of Mr. Lavenson to Oregon—I think it was in the spring of 1903, as near as I can remember. I remember his return. Mr. Benson was not home when Mr. Lavenson returned. Mr. Lavenson reported the result of his trip to me. I do not now remember how long it was after Mr. Lavenson's return from Oregon that Mr. Benson returned. When Mr. Benson did return I told him of Mr. Lavenson's reports to me. I do not know whether Mr. Benson had any conversation with Mr. Lavenson. After I reported to Mr. Benson what Mr. Lavenson told me about his trip to Oregon,

the relations between the offices of Mr. Benson and Mr. Hyde  
1232 ceased by Mr. Benson's direction. Prior to that time there had been a telephone between the two offices, but a very short

time after that the telephone was removed; and after Mr. Benson was informed of Mr. Lavenson's trip to Oregon, Mr. Benson left San Francisco and came East.

During the years 1901 and 1902 I knew the land attorneys engaged in San Francisco. Some of them were Mr. John D. Ackerman, Mr. C. L. Hovey, Mr. C. F. Gardner, Mr. N. F. Riley, A. T. Stratton, W. H. Pratt, R. H. Lyman, William H. Stewart.

During these years there was a custom among the land attorneys in relation to filing applications in the land office at Sacramento for each other. Benson's office sent up applications for other attorneys at any time any one from the office would be going up to Sacramento.

All of the books and records which were kept in the office were destroyed at the time of the San Francisco fire. When these applications were brought to the office by other attorneys to be filed, we would put in a book the name of the applicant, the description of the land, and the name of the attorney, so that, when we got the filing receipt, we could send it to that attorney. These filing receipts would be sent to the defendant Benson's office by the State Land Office. I kept the record in the office of all the filings that were made by every person, and if they were filed by us for other attorneys, we put the name of the attorney opposite the filing.

Prior to the fire we had this record in the office. It often  
1233 happened that receipts came to the office of the Defendant

Benson for applications which had not been sent up there by our office, either for ourselves or for other attorneys. When they would come to us, if there was any way I could trace who they belonged to I put the attorney's name on them, and if I could not find out who they belonged to, I would send them back to Sacramento to the State Surveyor General's Office. This same thing happened with respect to approvals. The approvals and certificates of pur-



chase sometimes came to the office of Mr. Benson, for which we could not find the applicant or the attorney, and if we could not find the attorney to whom they belonged, they would be sent back to Sacramento to the State Land Office.

I do not know the defendant Joost H. Schneider, personally. I never saw him in the office of Mr. Benson.

I know the defendant Dimond now; but I do not think I knew him prior to the filing of this indictment. I do not remember ever having seen him in Mr. Benson's office.

Mr. Benson and Mr. Schneider never had any business together that I ever knew of. I did not have the keeping of Mr. Benson's books.

In the years 1897, 1898 and 1899, Mr. Benson had no office boy other than Mr. Lavenson. He never had a colored office boy. I never took any papers of any kind or character to a notary public named Greenblatt, and never sent any papers there that I have any recollection of. I do not know Mr. Greenblatt. I never saw him in Mr. Benson's office; and I do not know of any business that Mr. Benson ever had with him.

1234 At this point, counsel for the defendant Benson hands witness an affidavit of two witnesses dated the 10th of February, 1898, signed by John C. Rice and S. F. Taylor.

The witness resuming:

John C. Rice and S. F. Taylor were two of the surveyors who made their headquarters around Mr. Benson's office. The description of the land in this affidavit is in my handwriting—Section 36, Township 9, South, Range 8, S. B. M. and the number, 6469; also Section 16, Township 10 South, Range 8 East, S. B. M., No. 6470. Neither I nor Mr. Benson's office had anything to do with putting these papers together as they now are.

I have no independent recollection now of how I came to write the description of land in 6469 and 6470 into this affidavit—but it was a common way of doing when we were allowed to put several descriptions in one affidavit. We have not always been allowed to put so many selections in one affidavit. In this affidavit there are four different descriptions of land—four locations. I frequently put more than one description of land in an affidavit, and I would ask the surveyors if they knew the description—if it was all right. The surveyors themselves would take these affidavits to the notaries.

This affidavit might just as well have been attached to application No. 6474, or 6484, as to attach it to 6469. When this affidavit was made out on the 10th of February, 1898, it was the practice, and was permitted by the State land office, to put several descriptions of land in one affidavit—to save a great many notary fees. That was the principal reason why so many descriptions were in one affidavit.

1235 No part of application No. 6560 A. B. Glassman is in my handwriting; but the affidavit of S. F. Taylor and John C. Rice is in my handwriting. This is one of these made out for the

surveyors. I do not remember that Benson's office had any interest in this application.

I had nothing to do with application No. 12323, Sarah Stein, dated March 3, 1898; but the body of the affidavit of Charles H. Holcomb and J. M. Dewey, dated August 11, 1898, is in my handwriting. This is another affidavit made out for the surveyors in the same way. As far as I know the office of Benson never had anything to do with this application.

We never had anything to do with application 12451—Charles A. Murdock; but the body of the affidavit dated August 11, 1898, signed by Charles H. Holcomb and J. M. Dewey is in my handwriting. So far as I know, Benson's office never had anything to do with this case. This affidavit was made in the same way for the surveyors.

With respect to these affidavits which were made by these two surveyors I do not think I ever had any conversation with Mr. Benson in relation to them. There was no occasion for talking with him about them at all.

During the time I have worked for Mr. Benson, he and Mr. Hyde always maintained separate offices.

#### Cross-examination.

By Mr. BAKER:

In some ways I have been quite active in Mr. Benson's business; knew a great deal about it.

1236 I do not know Mr. Greenblatt, the notary, and never saw him in Mr. Benson's office. I do not say he was not there. Hyde and Benson were not quite intimate in their business relations. When Mr. Benson was sending applications to Sacramento, for Mr. Hyde, papers would come over from Mr. Hyde's office—otherwise than that, papers did not come back and forth. Mr. Hyde and Mr. Benson were not friendly. Quite frequently Mr. Hyde filed applications for Mr. Benson, too. I cannot give the exact date.

I do not know very much about the relations between Hyde and Benson in respect to the Aztec deal. Mr. Benson went to Mr. Hyde's office sometimes—I could not say how often. Mr. Hyde very seldom came to Mr. Benson's office. I cannot recall just when the custom began of various attorneys taking papers up to Sacramento for other attorneys. It may have been as far back as 1897; and I think it continued up to 1903. Mr. Hyde and Mr. Benson severed their business relations in the spring of 1903—these business relations were severed before Mr. Benson made his trip east to Washington, D. C., and returned by way of the State of Washington. Benson made his trip east right after he severed his business relations with Mr. Hyde. He was probably gone a month or six weeks on the trip. It was very shortly after, within a month, of Mr. Lavenson's trip to Oregon that Mr. Benson came east to Washington, D. C. When Mr. Lavenson came back from Oregon, Mr. Benson was at his ranch. It was within a week after Mr. Lavenson's return from Oregon that I had a con-

1237      versation with Mr. Benson in regard to Mr. Lavenson's visit to Oregon. It was not very long after Mr. Lavenson's return from Oregon that Mr. Benson severed his relations with Hyde. It was almost immediately after Mr. Lavenson's return, and shortly after that, Mr. Benson came east. After that, Mr. Benson had no business relations with Mr. Hyde, to speak of. Sometimes filing receipts would come to me from the State land office that we would not be entitled to; and then I would send them back to the State land office. I could not say how frequently this happened in the years 1896, 1897, 1898 and 1899. I could not name a particular case, because it was nothing unusual. When this occurred, I would hand them over to Mr. Benson. I could not say of my own knowledge just what he did with them. When this occurred with respect to applications or approvals, and there was nothing about the paper to enable me to tell to whom it belonged—either to us or to some other attorney, it would be sent back. It was the same with filing receipts and certificates of purchase.

*Herbert L. Clarke.*

Direct examination.

By Mr. WORTHINGTON:

At present, I reside in Oakland, California. I have been in the employ of the defendant Hyde since the 28th day of June, 1898. When I first went into his service I was a little over 15 years of age.

1238      I was then an office boy, and continued as such for two years. After I went into the office, I began to learn how to use a typewriter, and then I began to copy letters and other routine work that happened in the office, and kept the files of the State indemnity school land selections. Another young boy came and took the work that I had originally been doing—that of running errands and so forth. When Mr. Hyde moved his office from Commercial Street to Montgomery Street, I still was working on State records. I probably did that up to 1902. That is, I was putting in the applications on the different districts in the State of California, in the books that we kept, for that purpose. In 1900, we were surrendering lands to the United States and making sales of forest reserve scrip.

Miss Doyle had the principal charge of the work, and I assisted her in making out those deeds and powers of attorney, or whatever other papers may have been required at that time.

In 1901, I think, Miss Doyle left there, late in the year. I then assumed sole charge of the books that were kept for the Act of 1897—that is, the Forest Reserve Lien Land selections.

When Mr. Dimond came there the first time I was in the main office, and when he came back from Washington after his first trip, we both occupied the two back rooms of the office building—rooms seven and eight. After I took charge of the forest lien land selections, I continued in charge of that work down to the present time.

I also learned to write shorthand. I first began to take dictation in shorthand from Mr. Hyde, in the early part of 1905. When

I first went to the office in 1898, the others employed in the  
1239 office were Miss Laura Farwell, Mrs. Curtis and myself.

Mr. M. D. Hyde (Mr. F. A. Hyde's brother) had a desk there, but he was not connected with the business of the firm at all.

I knew the defendant Schneider. I do not think that he ever had anything to do with the office business or the land business there. He was not in the office when I went there; the first time I ever saw Mr. Schneider was a short time before we moved from Commercial Street to Montgomery Street, and that, I think, was in September or October 1898. I remember he was there, helping to move the different office furniture when we moved from Commercial to Montgomery Street. We remained on Montgomery Street from that time until the time of the San Francisco fire, in 1906. Mr. Schneider helped carry the papers and furniture from one office to the other. The heavier furniture was sent by wagon. Up to the time that he did this manual work in helping to move the furniture and papers from one office to another, he did nothing about the office that I know of. I cannot recollect ever seeing him there before. I was in the office every day. I opened the office and was there to see that it was closed up. I was the last one to get out of the office at all times. With the exception of a day or half a day—if I wanted to leave the office with Mr. Hyde's permission—I have been in the office continuously with the exception of two weeks in 1900, when I was away.

I was in the office from half past eight until twelve in the  
1240 morning; and from half past one until five—half past five or six in the evening, as the occasion demanded. Nobody had as long hours as I did. After we moved from Commercial to Montgomery Street, Mr. Schneider was not at Montgomery Street more than a week or two. After this week or two my recollection is that he went off to one of the ranches. After that time, I have seen him in the office and out of it, cannot say how many times, but it was seldom. He spent most of his time on the ranches. When he came to the office he did nothing at all, outside of the fact that he made his ranch reports to Miss Farwell, and probably spoke to Mr. Hyde about the affairs of the ranch; but I have never seen him doing anything else, except in the early part of 1899, when he was tracing a map. Mr. Schneider continued to come to the office in this casual way until December, 1901. Up to the time that he left, he had nothing to do with the affairs of the office, or any connection with Mr. Hyde except as I have stated. I know the defendant Dimond. The first I remember of his being in the office was in May or June, 1901. He was there then about a month—studying the land decisions of the General Land Office. I saw him doing it every day. I am clear that he was there only a month, because he went away to Washington, D. C., in July or August. Up to the time he came to Washington, D. C., he was doing nothing in the office except as I have stated. While he was there in the office, I could see him every minute of the day. He was in a room between Mr. Hyde's office and the main room. Miss Doyle was in the same room with him.

Mr. Dimond was in Washington almost a year, and during  
1241 the time he was in Washington I saw the correspondence between Mr. Hyde and him.

Miss Doyle was the stenographer at that time, and wrote the letters. A copy of every letter that went out of the office was supposed to have been kept there for reference, and those carbon copies of letters sent out by Mr. Hyde were put on file. All the correspondence to Mr. Dimond was numbered, and I know that every letter written to Mr. Dimond was accounted for. Each copy was there. The letters from Mr. Dimond to Mr. Hyde were kept in the office—placed on a duplicated file in the same manner that the copies of the letters were sent to Mr. Dimond. Anybody in the office had access to this correspondence. I was looking at them a great deal. After Mr. Dimond was in Washington about a year, he returned to the office. When he returned to the office I had charge of the books there, and he occupied room 7, and he suggested to Mr. Hyde that, as I was in charge of those records, it would be best for me to go in the same room with him, in order that he might instruct me to systematize the work, and I went in the room with him. During that time there were numerous requirements by the General Land Office in regard to the different selections that we had, and the letters would come there and Mr. Dimond instructed me as to the best way to systematize them.

At this point, the witness identified a diagram made by him showing the location of all of the rooms in office of the defendant Hyde, and the different persons who were in each room.

1242 The ordinary way of persons desiring to see Mr. Hyde of getting into his room was through the main office. Where I have the passageway marked on this map was originally a closet, which was used by the hall janitor, and the partition at each end was taken out and a doorway cut through, making a passage way into that room; and before Mr. Dimond returned and he and I occupied this room together, this hallway had not been cut through.

When Mr. Dimond first came there he had a big roller top desk that was placed in Mr. Hyde's office. It would not go in the other door, and this doorway I have just spoken about was not then cut through. That was the reason why it was placed in Mr. Hyde's room. Mr. Dimond did not occupy that desk during the month that he was in Mr. Hyde's office, before he came to Washington in 1901. He only occupied that desk for a couple of days until the arrangements were made for him in room 2, where Miss Doyle was; and from that time on he was out there all the time unless he wanted to get some personal papers of him that were on his own desk.

After we moved to Montgomery Street, we had a telephone leading outside, and one leading to the various rooms in the office. The office system was for inter-communication with the different rooms of the office. Then there was a telephone between Mr. Hyde's and Mr. Benson's office. That was put in sometime in 1899, after Mr. Hyde's office was moved to Montgomery Street. When Mr. Dimond returned from Washington to San Francisco, he and I worked in the same room, side by side. After he returned, Mr. Dimond

1243 stayed there about three months, and then he went away again. Mr. Hyde was interested in some property in the County of Tulare, California, and Mr. Dimond went down there for

Mr. Hyde, and when he came back he stayed in the office a little while, until September, when he went to Washington, D. C., again. I do not remember how long he remained in Washington this time; but he came back to the office that same year. I think he went to New York in connection with the Aztec business this same time. He came back to San Francisco early in December. When he made these trips back to California, he always occupied the same room with me. After he returned to San Francisco in December, 1902, he went away again, and did not come back until a short while previous to the death of Miss Farwell; that must have been the latter part of January. She died on the 19th of February, 1903; and he came back shortly prior to her death, and he left Mr. Hyde for good about two weeks after her death. During the time he was in the office he and I always occupied the same room, and when he was away, all the correspondence between him and Mr. Hyde that related to the Forest reserve selections was always turned over to me. There was no communication from the telephone that ran from Mr. Hyde's and Mr. Benson's offices with room No. 7, where Mr. Dimond and I were. The only way we could get Mr. Benson's office was through the San Francisco Telephone Exchange. There was no private telephone between Room 7 and Mr. Benson's office. If either I or Mr. Dimond, in room 7 wanted to communicate directly with Mr. Benson's office, we would either have to go in 1244 Mr. Hyde's room to the telephone that ran directly between his room and Mr. Benson's or else we would have to call up Central over the San Francisco Exchange. During the time that Mr. Dimond and I occupied room 7, together, the conversation between Mr. Hyde and Mr. Dimond over forest lieu land selection business in Washington was carried on in both rooms. Mr. Hyde often came into our room and discussed generally the forest reserve lieu land business. Mr. Hyde would render his opinions, and Mr. Dimond either concurred with him or offered his own suggestions. That was done practically every day. Mr. Hyde was always in our room. The conversation was not secret or private—it was so anyone could hear it. There was nothing private about Mr. Hyde's office. No one was ever told to stay out of there at any time. Any clerk in his office went in there whenever he wanted to, regardless of who might be in there.

There was a long desk to the back of Mr. Hyde's room, and on it was another set of files, wherein numerous plats and papers of all descriptions pertaining to the ranches and stock companies and so forth, that everyone had to go to at some time or other during the day. Whenever we wanted to, we went in there and looked at them. We always had access to that room—running in and out at all times. Mr. Hyde's current files were in there.

My recollection is that the private telephone between Mr. Hyde's office and Mr. Benson's office was taken out about June, 1903. During the time I was in Mr. Hyde's office, I had nothing to do with the matter of the acquisition of state lands, the filing of applications and so on.

1245 With respect to the business of the office under the act of 1897, I made out deeds to the United States, powers of attorney to select and to convey, for I was at that time assisting Miss Doyle. Afterward, I did the same work in addition to keeping the records up. I had practically charge of it after Miss Doyle left. I kept the base book and the selection book and the sales book in respect to this United States reserve lieu land business. The base book purported to show what we then called "serip;" that is, as soon as we had surrendered to the United States an abstract of title and the papers were all completed so that either a selection or a sale could be made of it, the record was kept in that manner. The selection book was the record of the applications that were made under the act of 1897; and the sale book would show the serip that was sold outright, where we had nothing to do with the selection. In some cases, we would just sell the right of selection, and the papers would be called serip. In other cases we would file the proper papers and get the right of exchange allowed in the United States land office here. Mr. Hyde had some business in the serip sales.

I am familiar with the joint account between Hyde and Benson. I have seen it a great many times. While Mr. Slack was in the office, he kept that account. I cannot tell whether anybody made any entries in that book after Mr. Slack left. I have no recollection of any entries made in it afterwards. I had occasion to examine that book and become familiar with its contents. The joint account

showed the selections that had been made by Mr. Benson and  
1246 Mr. Hyde for their joint benefit; also selections that had been made by either one of them for joint clients—I should call them—some one outside that Mr. Benson had obtained, who wanted to apply for some land. That was put in the joint account. There was nothing whatever in that book that related in any way to the getting of lands from the state. It simply referred to transferring the title there or the sale of the serip, and nothing would be put in that book in relation to the matter until the sale was actually made.

I saw the contract dated September 12, 1898, between Mr. Hyde and Mr. Benson; but not until June, 1906. I have become familiar with its contents since then. The joint account purported to be a record of selections that had been made for the joint benefit of Mr. Hyde and Mr. Benson; and also selections that had been made for joint clients. There was no other book in which Mr. Hyde's matters and Mr. Benson's matters were referred to, and I am familiar with all of the books in the office. There was a financial account between Mr. Benson and Mr. Hyde, but I do not know anything about it. I have never had occasion to handle it at all.

On the Commercial Street office—either on the door or the outside—there was a sign which read "F. A. Hyde" and also "M. D. Hyde;" and my impression is there was on it also "J. H. Schneider;" and also "The Ores Timba Land Company." Mr. Schneider was the business manager of the Ores Timba Land Company. When we moved around to Montgomery Street, I had the signs  
1247 made which were put up there, and they were put up on the outside of the office. There were two signs, one on each



side of the door. On those signs were the names, "F. A. Hyde;" "M. D. Hyde;" "Leon Samuels;" and on the bill-board—the name, "The Ores Timba Land Company." Those were all the signs. After Mr. Dimond came to Washington in the spring of 1901, Miss Doyle began the transcript of the docket showing the selections that we had that were in Washington, and I finished it and then sent it to Mr. Dimond. They were in duplicate. The memorandum we sent Dimond were on sheets of paper that had been mimeographed, showing the applicants, the Land Office, the district, the date of filing, a record of the description of the land selected and the lands that were used as base, and whatever had been done in the office up to that time, in trying to complete the selection in the General Land Office. By the date of the application, I mean the date of the selection of the application. These lists were prepared on a separate sheet of paper for each case. Both the original and the duplicate in each case were sent to Mr. Dimond, and he made his notations on them and returned them to the office in San Francisco. His notations would show whatever he found out in Washington. I think he put on the numbers of the lieu selections. Our office did not have many of them. When Mr. Dimond returned to San Francisco from Washington, he brought back the originals that had been sent to him. Referring to the selections of Liebes, being applications to purchase No. — I remember that one selection of Mr. Liebes was in the State of Washington; that is, the selected land was in the State of Washington. My only  
1248 recollection about this case is what was on the docket—on the selection book, and that was only the name of the land that was selected, and the land that it had been offered in lieu for. There was no other entry made of that selection. That was put on the docket in the handwriting of Miss Doyle. I do not know how it came there. The record as to the other cases showed everything that had been done, even if a paper had been filed a note was made to that effect. It showed everything that was done in the Land Office, the history of the case as it progressed. While Mr. Dimond was in Washington I had correspondence with him about these various cases, and as I had correspondence with him, an entry would be made in the docket with reference to these cases, and if Mr. Dimond entered his appearance in any of the cases that would be entered on the selection book opposite the particular case. I know a copy of the entry in the Liebes case, was sent to Mr. Dimond in Washington, because the selection was towards the last of the docket and I copied the last part of the book, and I know I put on those sheets every selection that was in the book. I had no specific instructions to send it to him; but sent it under general instructions to send him the memoranda about all the cases, and I did not go to Mr. Hyde about this particular case; and so far as I know, Mr. Hyde could not tell that the particulars with regard to this particular case had been sent to Mr. Dimond, because I did not take that to Mr. Hyde. After I completed the lists, I sent them off to Mr. Dimond.

At this point, counsel for the defendant Hyde handed the witness



Exhibits 93, 97 and 98, being the three slips shown to the witness, Miss Doyle and the witness Valk.

1249 I saw these when Miss Doyle first made them out. They are in her handwriting. They were made for Mr. Benson. I do not know who instructed Miss Doyle to make them out. They are all joint locations. When I first went to work for Mr. Hyde I cannot remember seeing Mr. Benson and Mr. Hyde together. I cannot remember Mr. Benson until we moved the office to Montgomery Street. That was about four or five months after I first went with Mr. Hyde and the only place then that I ever saw Mr. Benson and Mr. Hyde together was in Mr. Hyde's office. I do not know that he came there very frequently. I have seen him in the office a good number of times. He may have been there once a week and he may have been there twice a week. He may have been there only once in two or three weeks. I have no recollection of their conversations.

I know that Mr. Hyde has been indebted to Mr. C. W. Clark. I have seen the notes in the office. I saw these notes before the fire of April 18th, 1906. I have seen the notes at different times before the fire. They were live notes. I cannot give you any idea of the amount of them. I know Mr. Allen, the Forest Supervisor. I saw him in Mr. Hyde's office only once. He came into the main office and asked to see Mr. Hyde. I saw him in the main office, because there is where he came first.

I have here before me a memorandum in reference to the cases contained in the indictment on trial. I prepared this memorandum since the San Francisco fire, from my recollection of the records in the office and information that I have gotten from the State Land

Office in order to re-establish the records of our office, so far  
1250 as they relate to getting lands from the state.

I have gone over the indictment, and I am able from my recollection of the contents of the book of Mr. Hyde which I described, and which was destroyed by the fire, to state as to those cases which are referred to in the indictment, where the Oregon base was used for California selections—whether those were cases which were Mr. Hyde's personal cases, or those in which Benson was interested as shown by the books. I have examined the descriptions. I observe that there are certain cases in which the Oregon base was used for California selections, and I found that they were nearly all joint selections—where the selected land was outside of the State of California, and as to those where the selections were in the State of California, they were Mr. Hyde's, so far as the books disclose and so far as I know.

Cross-examination.

By Mr. BAKER:

I have been over the selections in the indictment carefully, and I can take up each count of the indictment and tell what selections are California base. I have a very good recollection of what was in the books of Mr. Hyde. I cannot take up the 34 different selections in the indictment and tell you the base used in every one of them,

and I do not think anyone else can; but I do say that any selection in California that used the Oregon base was Mr. Hyde's, and any selection that used the Oregon base, that was outside of the State of California, was very probably a joint selection of Mr. Hyde and Mr. Benson.

With the exception of probably half a dozen selections that I can distinctly recall in the Visalia Land District, I do not think that there were any selections made in California using Oregon base, that did not belong to Mr. Hyde, himself, personally. That is my recollection of the books now. I can tell you distinctly what those selections were that I refer to. The Visalia selections were made for the joint benefit.

Recalled for direct examination.

By Mr. WORTHINGTON:

While Mr. Dimond was in Washington, in 1901 and 1902, there was a time when the correspondence from Mr. Dimond to Mr. Hyde was opened by the other clerks in the office. This would be when Mr. Hyde was either out of town, or out of the office. I have opened Mr. Hyde's mail when he would be out. There was no difference in the way that Mr. Dimond's correspondence was treated from that of any other people. Mr. Dimond and Mr. Hyde had a great many conversations in the office about the suspension order. I think it was early in December, 1902. These conversations took place in the room where I was, and I heard them talk about it. I could not give you any special part of the conversations—it was general, and it related to the order of the Commissioner of the General Land Office, suspending some of Mr. Hyde's cases in regard to the alleged fraudulent titles. I cannot recollect any specific part of the conversations.

1252 Then Dimond went to Washington, again, before Christmas, the same year; and returned the last of January or the early part of February, 1903, and they were still talking about this suspension order.

Mr. Dimond contended that affidavits should be furnished the General Land Office in Washington showing that the titles were all obtained in good faith. It was Mr. Hyde's contention that it was the Government's position to show that the titles were bad, and not his to show that the titles were good; and I remember that there was a great deal of argument pro and con about what should be done about it; that is, in obtaining those different affidavits from different applicants to the state for those lands, and some affidavits were obtained. The conversation seemed to be about the charge that some of the titles were obtained in the name of fictitious people, and Mr. Hyde contended that all those titles were as straight as a string. That was a favorite expression of his. I heard him tell this to Mr. Dimond in my presence. That was after Dimond's last return from Washington, in the latter part of January or the first of February, 1903.

I have personal knowledge of the destruction of Mr. Hyde's books

and papers in the San Francisco fire, in 1906. I had charge of them from half past seven in the morning of April 18th, 1903, up to the time they were destroyed, three days later.

"A. Mr. Hyde and I left the office on the 18th of April a little before noon. Then the fire was a block distant. We went up one block, to Kearney Street, and stopped there. At the time  
1253 the books were in the safes. He was afraid of the safes. He did not think they would stand heat, and he wanted to know if I would go down and get them. At that time there was a blockade on Kearney Street, but I managed to get in, in company with two other men, and I got all the books with reference to all his land dealings. That is, the dockets, both pertaining to the State indemnity lands and the forest reserve lieu selections, and brought them up to what is known as Joy's drug-store, at the corner of Kearney and California Streets. Probably three hours later, the fire kept creeping up, and I moved them up the hill a distance of three blocks. They were left there until about seven o'clock the same evening, and in the meantime I had gone home. I went down again and moved them three blocks further to the corner of Powell and Washington Streets; about nine o'clock I went down again, and took part of those books—that is, as much as my brother and myself could carry—to my own home, which was probably a mile to the northwest from where they were then.

"Q. Do you remember what books they were you and your brother carried up to your house? A. Very distinctly. They were the forest reserve lieu selection book, the ledger, and a second forest reserve selection book, and two State indemnity school land dockets—24 and 25 were the numbers of them.

"Q. What about the book in which you have testified or as to where there has been some testimony, about a joint account? A. That was the ledger. That was also with the books I had at my house.

1254 "Q. That was one of the books you took to your house?

"A. Yes.

"Q. Go on. Tell about what happened. A. I left them at my house, and Friday the fire was about two blocks away from there; but it turned down a block from my residence and burned out west; and everyone in that neighborhood considered themselves comparatively safe, and I did not move then. In fact, we did not move any of our personal property; but in its path was a large medical company, and that was dynamited. That was the evening of Friday, the last evening of the fire; and when they dynamited this building it spread the flames all over the vicinity in which I lived, and then everybody was powerless to save anything.

"Q. What became of your house and its contents? A. It was burned up.

"Q. You spoke of bringing some of the books. Some of the books you left back at some place, and did not take them to the house? A. Yes.

"Q. Where were they finally left? A. They were left at Powell and Washington Streets, in the cellar of a house."

Mr. Hyde's house was also burned. Mr. Hyde lived at 1822 Sacramento Street. His house was also burned about Thursday evening, I think. His office was burned Wednesday evening. From my knowledge of the business of Mr. Hyde and these books, 1255 Mr. Hyde and Mr. Benson had no joint interest at all in the taking of any lands from the State of California. Mr. Hyde dealt largely in the sale of scrip. My personal knowledge of his dealing in the sale of scrip began in the first part of 1900. That is when I can recollect it distinctly. That is when I was doing clerical work. His business in the sale of scrip was very large, and continued on down to 1904. I did not have anything to do with the docket posting of what I referred to here as posting notices that have to be put on the land when it is selected under the act of 1897; but I have made out papers in the office and sent them to different clients to have the posting done. The notice had to be posted on the ground for a certain period, I think thirty days or five weeks. At the time, a notice had to be posted in a local United States Land Office, and one also published in a newspaper in the country in which the land was selected or located. Sometimes, these notices were signed by the party in interest and sometimes somebody in the office signs the name of the applicant. When Mr. Dimond returned to San Francisco, he brought back with him the duplicate lists of cases that had been made up and sent him. My recollection is that these were in the office at the time of the fire. I helped prepare those lists. There was nothing in those lists which indicated in any way how the land had been obtained from the state; nothing in them but the description of the base land.

On one occasion, Mr. Hyde had made a large sale, and was anxious to get off the papers by the evening's mail, and I had Mr.

Burnes the notary, come up to the office one night and sign 1256 a large number of these deeds or powers of attorney. I was present and helped get the papers off. It was a scrip sale which Mr. Hyde had made. I do not know how many papers Mr. Burnes attached his notarial seal to at the time—the surrenders were often made in forty acre tracts, and where there was a whole section, that would be sixteen different powers of attorney that had to be acknowledged for a single section, and if there were several sections sold at that time, there would be a great number of powers of attorney that had to be acknowledged. There must have been a hundred or a hundred and fifty papers that Mr. Burnes executed at that time. I never heard either Mr. Hyde or Mr. Dimond in any of their conversations, mention the name of Mr. Harlan or Mr. Valk in Washington, and I have never seen those names in any correspondence between Mr. Hyde and Mr. Dimond, and I never saw in any of the correspondence between Mr. Hyde and Mr. Dimond any reference to bribing anybody in Washington or making any arrangements with anybody inside of the Department, or anything in relation to obtaining lands from the states of California or Oregon in the names of fictitious persons, or anything in relation to forging anybody's name—or anything of that kind.

In his telegrams, Mr. Hyde, at times used a code—the Anglo-

California I think was the name of the code or maybe, the Anglo-American. The book itself acted as interpreter in deciphering the telegrams, and any of the clerks would decipher them. The telegrams were placed on file. Maybe the interpretation would be placed on the telegram in pencil when it was filed away, so that the record—the papers there—showed the contents of the cipher telegrams, as well as the English of it.

After the suspension order of November 1902, Mr. Hyde continued to have correspondence and business dealings with the United States Land Office in Washington, D. C., and except as to the forest reserves which were mentioned in that order, the business kept on as it had before. At the time Mr. Schneider finally left the employ of Mr. Hyde in December, 1901, I knew something of the books of the Ores Timba Land Company. There was a stock certificate book that was also burned up in the San Francisco fire. At the time Mr. Schneider finally left Mr. Hyde's employ, he had stock in the Ores Timba Land Company, which he surrendered prior to his leaving. I saw the cancelled stub, and the cancelled certificate of stock. No new certificates were issued to anybody else for these, to my knowledge. Before Mr. Dimond had anything to do with it, we had correspondence with the Land Office in Washington about these selection cases that were pending here. I have seen the correspondence. I have written letters of that kind to the Land Office here. Some of these cases did not go through quickly—in fact a great many. There were a great many more that did not go through than did go through we did not get approvals at all hurriedly.

#### Examination by Mr. VANDER VEER:

I had no acquaintance with Mr. Dimond before he entered Mr. Hyde's employ in May or June 1901. When Mr. Dimond came to Mr. Hyde's office, Dimond had an office in the Mills Building. Dimond's furniture was moved into the Hyde office. One of his desks was put in Mr. Hyde's room. Another desk that he had was put in the main office, and there were two large boxes that were put upstairs on the second floor, that Mr. Hyde used as a store room. These boxes contained law books and papers. Mr. Dimond's large desk was placed in Mr. Hyde's room. My recollection is it would not go in the door of the main office. After Mr. Dimond had been there two or three days he used a desk in the small room next to the main office. There were no doors between the main office and Mr. Dimond's room; just two open doorways. Mr. Dimond transacted his business in this room too—the small room next to the main office. Just after he came to Mr. Hyde's office, Mr. Dimond studied the land decisions of the Department of the Interior, and then he was working on the incorporation of the Automobile Club of California, of which Mr. Hyde was the president—he was looking after the passing of some speed ordinances relative to automobile travel.

While Mr. Dimond was in the office, I have seen other people, not connected with Mr. Hyde's office, come in there and consult him. After Mr. Dimond left for Washington there was a great deal

of correspondence between Mr. Hyde and Mr. Dimond, and this correspondence continued during the whole time that Mr. Dimond remained in Washington on this first trip. There was no correspondence that I know of except that which related to forest reserve lieu land selections. When letters were received from Mr. Dimond at the office, during that period Mr. Hyde would open them if 1259 he was there; if he was not there someone else in the office opened them—this applied not only to Mr. Dimond's correspondence but to any correspondence. Mr. Dimond could only talk to Mr. Benson over the telephone by using the regular San Francisco exchange; that is by calling up Central. He had no direct connection with the private wire that has been referred to. Mr. Dimond's correspondence was always placed on the office files. There were memoranda of the office dockets containing over three hundred separate cases, made up and sent to Mr. Dimond. These lists were sent to him the latter part of 1901. Mr. Dimond never had anything to do with the preparation of these applications for selections—either the state or the United States. Every selection that was on the list sent to Mr. Dimond had either been filed in the United States Land offices or in the General Land Office in Washington. Many of them dated back to 1897 and 1898.

Mr. Dimond's first acquaintance with that was derived from this list which was sent him. After Mr. Dimond returned to San Francisco he occupied room 7 with me, and, later on in the year, he went down to the County of Tulare, and I had charge of the forest reserve docket and continued in charge of it.

During the first few weeks after Mr. Dimond's return, his wife was suffering from typhoid fever, and Mr. Dimond was deeply concerned about her, and he was not in the office every day during that illness. In his absence I attended to the correspondence with the General Land Office at Washington. If letters were to be sent in Mr. Dimond's name, I sent them and used a rubber stamp for

1260 Mr. Dimond's signature. This stamp was in the office. This signature stamp of his remained in our possession until after the time that Mr. Dimond left the office permanently. I could not tell how frequently we used this stamp. I know I used it. I used it off and on all the time while Mr. Dimond was there; could not tell how often—many times. Did not consult him about using it. There were things I knew had to be done, and I simply used it as a matter of convenience without interrupting him enough in whatever he might have been doing. While Mr. Dimond was in Mr. Hyde's office he did not assume to have any direction of the business of the office or directing the clerks as to their duties, except myself, and he instructed me how he thought our records should be kept, and how it would be best for me to facilitate matters between our own office and that of the General Land Office at Washington; and I have consulted him as to what should best be done in compliance with the requirements of the General Land Office in regard to several selections we had—it was routine and detail work. Then Mr. Hyde purchased the Angeolia ranch in the county of Tulare.

Mr. Dimond attended to this in his office, room 7. He made numerous purchases, buying wire for fencing, posts and so forth.

Mr. Dimond severed his relations with Mr. Hyde's office the last of February or the first of March, 1903; and Mr. Dimond remained in the office a week or ten days afterwards waiting to get into the office that he was going to on California Street. He arranged for these offices at the time he left Mr. Hyde's employ and moved into them within two weeks thereafter.

1261 He could not get in earlier because they were occupied by someone else. When they were vacated by the old tenants, he immediately moved in. I have not the slightest doubt but that I continued to use the rubber stamp signature of Mr. Dimond on letters or correspondence of the office for Mr. Hyde with the General Land Office after Mr. Dimond severed his relations with Mr. Hyde's office. Cannot tell how long, but I remember taking the stamp over to Mr. Dimond when I was through with it. Mr. Dimond was in his new offices when I took the stamp over to him.

Further examination.

By Mr. WORTHINGTON:

The reason I used Mr. Dimond's stamp signature after he had severed his relations with the office was because there were a few selections there that required attention, and he had entered his appearance in these cases in the General Land Office at Washington. I cannot tell exactly what the nature of these communications to the General Land Office was, in which I used this stamp—probably the filing of some non-mineral affidavits, the completion of an abstract of title, or something of that kind.

Cross-examination.

By Mr. BAKER:

Professor G. E. Bailey was, I think, employed by Mr. Hyde in the early part of 1903. I think Mr. Dimond was in the office a short time when Professor Bailey came there. Mr. Bailey  
1262 was connected with the saline lands. He was getting affidavits for that purpose. So far as I know, all Mr. Bailey did was in reference to this saline matter. I do not know where he went in relation to this matter. I presume he came to Washington. I cannot fix the part of the year in 1903 that he came. I know he was not in the office a great length of time.

I have seen Mr. Benson come into Mr. Hyde's office—Mr. Benson would see everyone in the office and he would see Mr. Hyde in his office. Mr. Hyde dealt in land, particularly under the state school indemnity act, and the act of June 4, 1897. He was also interested in numerous ranch properties.

When Mr. Dimond first came to Mr. Hyde's office, he remained in Mr. Hyde's room three or four days. After that, he came out into Room 2, until he left for Washington; when he returned from Washington, he went into Room 7.

To my knowledge, he went to Washington three times. I think

it was October, November, or early in December 1902 that he went the second time. Then he returned in time for Christmas. I am not certain whether he went away again before Christmas or afterwards; but I know he last returned the latter part of January or the first of February, 1903, and remained with Mr. Hyde a couple of weeks after that, until he severed his connection with the office about the first of March.

I have taken papers for Mr. Hyde to notaries to have them acknowledged. A great many people have gone with me to notaries; and I have taken any number of deeds to the United States 1263 and powers of attorney to select to the notaries and the parties did not go with me, and the notaries would acknowledge them, hand them back to me, and I returned them to the office. I had nothing to do with, and know nothing about the securing of applications for school lands.

I cannot remember ever having anything to do with the original acquisition of titles to school lands. I do not know of any custom of the office to fill in descriptions of property and grantees and parties and dates in blank deeds. We did keep blank deeds to the United States and we had blank signed powers of attorney to select under the act of June 4, 1897, signed "F. A. Hyde;" "F. A. Hyde & Company;" and "C. W. Clarke." I do not know anything about blank deeds being in the office in relation to the Oregon business. Have never seen them in the office at all. I am acquainted with C. W. Clarke. He is a man probably over seventy years of age, near eighty, for all I know. He is very old. As far as the records of Mr. Hyde's office are concerned, Mr. Benson had no interest in any California base of Mr. Hyde's. There was no book in the office showing any interest of Mr. Benson in Mr. Hyde's California base lands, or any books showing any interest of Mr. Benson in any of Mr. Hyde's school selections. Docket 20 showed Benson's interest in Hyde's Forest Lien Selections. Can't tell of my own knowledge whether they were based on California lands. I do not know what Mr. Benson did in his own office. He did not have anything to do with getting school selections in Mr. Hyde's office. The books in Mr. Hyde's 1264 office showed the address of applicants, the dates of certificates, and every other thing concerned with every separate selection that went through Mr. Hyde's office.

Referring to the California lien selections of Mr. Hyde, his records never showed the name of John A. Benson connected with them; but Mr. Hyde's records did show the names of the applicants, the applicant's addresses, a description of the lands, deeds, certificates, approvals and so forth. If there was an agent to write to in reference to these applications, his name would appear.

After Mr. Dimond returned from Washington and had a conversation with Mr. Hyde about getting affidavits as to the manner in which some of the base lands were obtained, I cannot tell you who aided in getting those affidavits. I cannot tell you how Mr. Hyde went about it. I know that the affidavits were obtained, because some of them I saw in the office.

M. D. Hyde, Mr. F. A. Hyde's brother, had a desk of his own in



his room, No. 6. He had no connection with Mr. Hyde. He was directly interested with practicing in the United States Land Office. Mr. F. A. Hyde always represented himself in the United States Land Office. While I was with Mr. Hyde, and down to the time of the filing of this indictment, Mr. M. D. Hyde did nothing for F. A. Hyde that I know of.

I think that Mr. Hyde had some blank applications written with an electric pen, to use in the business,—that is, leaving spaces for the name of the applicant, description of the land, and other matter to be filled in, similar to Exhibit 408. Lead pencil matter on Exhibit 408 appears to be in handwriting of Mr. Hyde. I cannot state exactly when the private telephone that ran between Mr. Hyde's and Mr. Benson's office was taken out. I would say it was about May or June, 1903. The letter files of the office were kept in room 5—when the letters were current they were kept on a file that was put on Mr. Hyde's desk every morning by me, in order that he might see what he wanted to do in the way of corresponding; and when he was through with them they were put in either the general file, which was the one kept in room 5, or, if they were related to some special matters, they were placed where they belonged. The correspondence between Mr. Hyde and Mr. Dimond as to the forest lieu selections was kept, while Mr. Dimond was in Washington, in Mr. Hyde's room, on the long desk that was in the back of that room; and when Mr. Dimond returned they were taken out of Mr. Hyde's room into room seven or eight. I do not know which one of them, and kept there.

I know that the letters received by Mr. Hyde from Mr. Dimond were filed, because they were put on this file consecutively, and each and every letter was numbered, and I am sure I have not seen any letters that were numbered that were not there at some time—if there was a letter missing, I was the one that had to go and get it and put *in* in its place.

The carbon copies of letters sent out by Mr. Hyde were kept and placed on the file. I do not know that I ever examined the Hyde-Dimond Aztec correspondence. I did examine the Hyde-Dimond correspondence that was on file in Mr. Hyde's room, on numerous occasions. There was no Hyde-Benson file in the office. When Mr. Schneider was in the office at 630 Commercial Street, he was out in the main office. The first time I remember seeing him in the Montgomery Street office was in the early part of 1899.

Redirect examination.

By Mr. WORTHINGTON:

In my cross examination by Mr. Baker, in speaking about taking papers from Mr. Hyde's office to a notary when the parties did not go along, these papers were deeds to the United States and powers of attorney to convey, under the act of June 4, 1897. These papers were signed by either the corporation of "F. A. Hyde & Company," by Mr. F. A. Hyde, himself or by C. W. Clarke.

When I last saw Mr. C. W. Clarke, a week or two before I left Oakland, he was able to walk, but anyone by looking at him would know that he is feeble. He uses a cane continually.

There was an original base book, and another base book—because, after the lands were surrendered to the United States, they were transferred from the original books (docket 19,) to book No. 21. This docket 21 showed some people with whom Mr. Hyde was interested in the base land. There were M. H. Hecht; Charles Sutro; Frank J. Simms; A. B. Forbes—I cannot remember any more now. Mr. Benson's name did not appear in that book.

Recross-examination.

By Mr. BAKER:

I do not recollect seeing Mr. Cleveland Forbes' name in 1267 Docket 21. His name was in docket 19.

Redirect examination.

By Mr. VANDER VEER:

I am not certain that Mr. Dimond was in the office at the same time that Mr. Bailey was there. There was an entrance from the hall into the room No. 7 that Mr. Dimond and I occupied. Mr. Dimond's clients would enter through that door.

Recross-examination.

By Mr. BAKER:

I do not distinctly remember ever taking any papers to a notary without taking the parties with me to acknowledge them, except those papers signed, "F. A. Hyde," "F. A. Hyde & Company," and "C. W. Clarke."

*John McPhaul.*

By Mr. WORTHINGTON:

Q. The order of November 21, 1902, which is in evidence here, suspends action on any cases which Mr. Hyde was connected with in reference to certain forest reserves. I want to know what was done in reference to cases with which Mr. Hyde was connected which did not relate to those reserves. A. You mean cases where the base land

1268 was situated in the forest reserves, other than those covered by this suspension order?

Q. Yes. A. They were passed upon like anyone else's cases, taken up in the regular order and disposed of.

Q. Taken up and passed, just the same as any other person's cases, if they were all right? A. Yes sir.

Q. How long did that continue.

To this question, counsel for the Government objected.

Whereupon, counsel for the defendant Hyde stated that as the Government implicates the defendant Dimond by saying that he

entered appearances in several cases after the order of suspension was made, the defendants wish to show that the fact was that Mr. Dimond must have known that the Government itself continued to take up Mr. Hyde's cases and to issue patents to him down to a time later than when the defendant Dimond was connected with the defendant Hyde's office;

"The COURT: You are asking him to put in evidence from which the jury would infer that the cases were all right, because the Government treated them as all right.

"Mr. WORTHINGTON: No; that is not the point. The point is to show that the Government continued to recognize Mr. Hyde was having cases before the office which were proper to act on, and issue patents for, and did in fact issue them after the order of suspension was made.

"The COURT: I do not understand that the fact whether they did it in other cases or not is important.

1269 "Mr. WORTHINGTON: It bears on the relation of Mr. Dimond to the case.

"The COURT: Mr. Dimond had a right to appear as counsel for Mr. Hyde in the other cases, and no claim is made to the contrary, as I understand it.

To this ruling of the Court counsel for the defendants and each of them duly excepted.

*John A. Benson.*

Direct examination.

By Mr. CAMPBELL:

I am one of the defendants in this case. I am sixty two years of age. I have lived in San Francisco about thirty years; have lived in the State of California forty years.

I am a land agent, and I act as land attorney and deal in the buying and selling of scrip for others; and I am a civil engineer. I have been engaged in the business of a land agent, buying and selling land for other people for about twenty years. I was formerly a surveyor, and then I came to Washington and engaged in dredging the Potomac River, and filling the flats, and excavating the Tidal Basin; and in connection with my partner, Mr. McNee, I did the work on the Potomac Flats opposite the White House. That was in 1884, 1885 and 1886.

I know the defendant Frederick A. Hyde. I have known him thirty or thirty-five years. I signed the contract which has been put in evidence here with Mr. Hyde. At the time of the  
1270 signing of that contract, I had no information or knowledge as to the manner or method in which the titles from the state had been obtained by Mr. Hyde. I sold scrip under that contract. In the term, "scrip" was included an abstract of title, a certificate of the County Clerk that no suits were pending in reference to the land, a certificate from the County Recorder that there was nothing on record against the title, a deed of relinquishment to the United States, a certificate from the Tax Collector that the taxes

had been paid and there were no liens on account of taxes, and a selection application made by the owner of the land, designating the land to be selected, and the land in lieu of which it was taken. In dealing with this scrip which I sold, we relied upon the abstract of title, and in my business dealings, in the purchase and sale of scrip for myself and for other parties, that was what we relied on—the abstract of title; and that was the general practice in the sale of scrip.

I heard about the suspension order by the Commissioner of the General Land Office, dated November 21, 1902, from Britton & Gray; and, right after I heard this, I saw Mr. Hyde and asked him if there was anything wrong about the Oregon titles. He said there was not.

James H. Lavenson, a witness in this case, is a clerk in my office. First, he was office boy and then clerk. Up to 1902, he had been in my office eight or ten years. Lavenson told me that the Oregon titles were not very good. He told me he obtained his information from a visit he made to Portland Oregon. I knew that Lavenson had gone to Oregon, and the purpose for which he went, and  
1271 I consented to his going for that purpose. After I obtained this information from Mr. Lavenson, I came east and went to New York to see Mr. Theodore Seligman, and I received the information from him in relation to the claim of the Government as to the Oregon titles. That information was that some of the Oregon and California titles were bad. At the time I received this last information, I had sold about thirty per cent of the base under this contract with Hyde. Among the people indebted to me or my clients for base that had not been paid for, are Henry Hewitt, Jr., Tacoma, Washington. He was indebted to Clarke. Also, the Willamette Pulp & Paper Company. They were represented by William T. Johnson, of San Francisco, and O. G. Griffith of Oregon City, Oregon.

On my way home, I went to Tacoma, Washington, to see Mr. Hewitt. I told him not to pay anything more on his scrip until he was notified by me. I told him Oregon bases were questioned. I gave this same information to Mr. Griffith and Mr. Johnson, and that I did not want them to make a payment until its validity or invalidity was determined. After I received the report from Mr. Lavenson on his return from Oregon, I instructed my office that all business relations between myself and Mr. Hyde must cease. At that time, there were relations between Mr. Hyde and myself under the contract of September 12, 1898, and also in relation to the Aztec contract; and, as a matter of fact, from that time on I have had no business relations with Mr. Hyde. In the year 1903, F. A. Hyde commenced a lawsuit against me—F. A. Hyde & Company. I think, were interpleaders. The Anglo-California Bank was also  
1272 indebted to Mr. Hyde on account of the Aztec contracts and that I had received various sums of money, and the bank had also in trust for me, various sums of money, and he asked an accounting; and asked the bank to deliver no further Aztec scrip until the account was rendered.

After Mr. Lavenson returned from his trip to Oregon, and before I came east, I had a conversation with Mr. Hyde and told him that I had information that the Oregon titles were defective, and that my clients had paid me large sums of money, from which I had accounted to him, and for which they held me responsible, and, that, in view of that fact, all relations under that contract, and all relations under the Aztec contract must terminate. Mr. Hyde said the Oregon titles were good.

From that time forward, I had nothing to do with Mr. Hyde in relation to the Aztec contracts. None of the persons who purchased this Oregon scrip through me paid anything more on their scrip from the time of my conversation with Mr. Hyde about the Oregon titles being good, up to the time of the filing of this indictment. I did not make any accounting to Mr. Hyde after that, under the Aztec contract. I never saw any of Mr. Hyde's land books, to examine them; and I never knew of any joint account in relation to school lands kept by Mr. Hyde in any of his books; and I never knew of any account between Mr. Hyde and myself, except the money account.

I know the defendant Henry P. Dimond. I had very little acquaintance with him prior to the year 1901. He had never performed any land business for me, before 1901. After Mr. 1273 Dimond came to Washington, he negotiated the Aztec contract; and there were some other contracts in relation to scrip similar to the Aztec, but they were not consummated. Prior to the negotiations of the Aztec contract, Mr. Dimond had never done any business for me of any kind; except that he answered one letter of inquiry that I wrote him. The letter I wrote him is exhibit No. 77. That was in relation to a selection under the Oregon contract with Hyde. I thought it should be approved. Mr. Hyde was going away, and I asked his permission to write to Mr. Dimond regarding that transaction, and I think Mr. Dimond answered it, although I am not positive. That is the only letter I ever wrote Mr. Dimond that I can recall, except those which related to the Aztec and kindred deals; and Mr. Hyde had no interest in the other deals which I spoke of which were negotiated by Mr. Dimond but not worked through.

I did not accept any charges that Mr. Hyde made against me for one-half of Dimond's salary. I knew he made charges of that kind. I told Mr. Hyde that if I had to pay Mr. Dimond for his services in relation to the Aztec contract I thought that was enough, and that I should not pay him anything more. Mr. Hyde made no reply to this.

Mr. Hyde told me that Mr. Dimond was employed by him, and he regretted my having bothered him with the Aztec contract. Mr. Hyde said I should pay Dimond for the Aztec contract.

I never paid Mr. Hyde any of Dimond's salary, and I did not pay Mr. Hyde the notes which were given on the settlement which has been testified to here by Walter K. Slack, because he had 1274 from clients of mine larger sums of money for sales under the contract of September 12, 1898, and my clients held me

responsible for them; and as the thirteen thousand dollar note was some more of the same transaction, I did not consider that I ought to pay it; and I made that statement to Mr. Hyde.

Mr. Hyde sub-tituted some California scrip for Oregon scrip under the contract of September 12, 1898—a good many thousand acres. He had used Oregon bases for his own business, the abstract of title being at hand and he had replaced that with California bases. I did not know anything about the method or manner in which California bases which were substituted for the Oregon bases, had been obtained. I had no interest in the acquisition of any of the California bases from the state which Mr. Hyde furnished in lieu of the Oregon bases—not a particle, and I had no interest in the acquisition from the State of Oregon of the lands which were the subject matter of the contract of September 12, 1898.

I knew the defendant Joost H. Schneider when I would meet him on the street. I never had any conversation with him in my life in relation to land matters until he came here to Washington at this trial.

I think the private telephone was put in between the office of Mr. Hyde and myself about the first of 1899. It was after the contract of September 12, 1898. The reason for putting in that telephone was for convenience in consultation in regard to sales under that contract. Sometimes a person would go to Mr. Hyde's office in relation to sales under that contract, and he would give them a figure,

and then they would come to me and see if they could not  
1275 get a different figure, and the telephone was used to state what had been done in either office; and, after the Aztec matter came up, the telephone was used in connection with that. This private telephone cost both of us \$2.50 a month, without any switching charges. The regular charges in San Francisco are five cents for each call. This private telephone was used by me to consult Mr. Hyde when people would come in to see me in relation to the purchase of scrip under the contract of September 12, 1898. The private telephone was taken out in the spring of 1903, just after Mr. Lavenson's return from Oregon. It came out just shortly after the cessation of business between me and Mr. Hyde.

My office was first at the corner of Sacramento and Montgomery streets—508 Montgomery Street, the Pacific Mutual Life Insurance Building, and then it was moved to 507 Montgomery Street, on the opposite corner, and stayed there until the fire. When I moved to 507 Montgomery Street, a number of the surveyors came to my office very frequently. Among them was James R. Glover, Colin A. Henson, W. F. Benson, John T. Wright, N. L. Burdan, George W. Baker, George H. Perrin, Frank G. Tagliabue, Louis H. Cutting, S. F. Taylor, James M. Dewey, and Charles H. Holcomb. When these men came to my office they generally congregated in the outer room. Mr. Perrin had a desk, and there was a long desk probably thirty feet long that the others used. It was also used as a counter. Mr. Glover, George H. Perrin, John T. Rice, S. F. Taylor, George W. Baker, and Berdan, are all dead.

Tagliabue, I think, is in San Francisco or Alaska. M. F. Reilly is in San Francisco.

1276 There were other land agents in San Francisco, among whom were James T. Stratton, Charles F. Gardner, Duncan McNee, Richard C. Lyman, William E. Steward, F. A. Hyde, John D. Ackerman, M. F. Reilly, and a man by the name of Healy, Fred W. Lake, C. L. Hovey, Mr. Hamilton, Mr. Mason, and others.

Whenever these land surveyors knew the facts from having surveyed the land, as to the character of the lands, they were called upon by various land agents to make affidavits as to the character of the land. Whenever an application was to be made, or a telephone message was sent by any land attorney asking if there were any surveyors about who knew the character of certain described land, Miss Glover would find out if there were, and if so, would have the surveyors make out the affidavits and take them out to the Notary. These surveyors usually charged \$5 for this service. They never charged me anything directly. If they needed a little money, they came to me to get it. They were people who had been with me on surveys in the early days, some of them had surveyed over large portions of the state of California, and I knew this fact. Some of it I surveyed myself. They did not pay me anything for the use of my office. It was a kind of a rendezvous. I was glad to have them there. There was a practice among land agents of filing applications for each other in the land office at Sacramento. Whenever anyone was going up to San Francisco, other land attorneys who knew that fact and who had applications to file, would send them up by him; that is, they would file for each other. The land attorneys thought this practice was better. Prior to this there had been several difficulties. Prior to this practice, sometimes a half dozen land attorneys might file applications on the same land.

1277 My office has filed applications for nearly all of the land agents. Sometimes Mr. Hyde would file applications for me and other attorneys filed them for me—Mr. Ackerman, Mr. Reilly and Mr. Slack.

This practice of attorneys filing applications for each other became general in 1902, particularly. When I filed applications for other lands attorneys, the filing receipts generally would be sent to me, and I would turn them over to Miss Glover and she would examine them and turn them back to me, and I would direct her to send them to whomsoever they belonged. Sometimes filing receipts would come to my office and I could not find out to whom they belonged and these would be returned to the State Surveyor General at Sacramento. In some cases where I file for other lawyers, approvals of the selections would come to me, and the same method would be pursued as to these. It quite frequently occurred that approvals for which I could not find anyone who claimed them would be sent to me; and I would send them back to Sacramento. The same with reference to certificates of purchase. In my business, I filed applications for various other parties. I filed application 2221 for Joseph Wineberger. He was the son-in-law of Mr. Hart. Mr. Hart paid me the filing fee, and I sent the application to Sacramento. Mr. Hart gave me the money to pay for the certificate of purchase. I never furnished any



of the money. Afterwards, the certificate of purchase was delivered, and it was sold to Mr. C. W. Clarke through Mr. Friedlander. I had something to do with the negotiation of this sale.

1278 Mr. Wineberger borrowed some money from Mr. Clarke to make the final payment, and a patent was issued direct to Mr. Clarke. I sent the certificate of purchase up to Sacramento, and my recollection is that the patent came to me and I delivered it to Mr. Clarke.

On behalf of Mr. C. W. Clarke, I tendered a portion of the land described in that patent to the Government for a lieu selection. I do not remember what selection. Mr. Hyde had no interest in this.

With reference to application No. 2226, Otto T. Zinns, Mr. Lilienthal asked me to make up an application for himself. I made it up and left it with him. A short time afterwards, he handed it back to me, together with his check for \$25, and I sent it to Sacramento and had the application filed. Afterwards he asked me to get the approval, and I prepared a letter and sent it down to him, and it was returned to me signed, giving me authority to present it to the Land Office. I sent it to Sacramento, and got the approval, and delivered it to Mr. Lilienthal, who gave me his check for the amount due on the application. I sent it to the County Treasurer of Mono County, and, in due time, received the approval with the payment marked on it.

In my dealings with Mr. Lilienthal, I did not know that he was acting for Mr. Zinns. After this certificate of purchase came, it was assigned to C. W. Clarke, and a patent was issued to C. W. Clarke. The patent was sent to me and I delivered it to Mr. Clarke.

Application 2232, Tilli Fleischauer. I knew her quite a  
1279 number of years. Had business relations with her prior to her making the application. I had borrowed some money from her two or three times. At the time of this application I was indebted to her about \$2,000. She came to the office one day and was complaining about hard times and I told her I thought it was a good thing for her to take up some school lands. She said she had no objections and I had an application prepared and went with her to the notary and said on the way that I should have to use her money to pay for this land. At least that is my recollection. She said that was satisfactory. I paid for the filing fees out of the money I owed her and also made the payments on the land as they became due; and I saw the matter through the Land Office. She sold her certificate of purchase to C. W. Clarke and she made over \$800 on it. I got the patent for her and delivered it to Mr. Clarke. I took her to two notaries, Henry P. Tricon and M. Greenblatt. I went with Mrs. Fleischauer to Moses Greenblatt, the notary, when she executed this paper, and I was never in the office of Moses Greenblatt but that one time.

Application 2225, Margaret Andrews. This application came to me through Mr. Hart. He gave me the money. I do not know Margaret Andrews. Mr. Hart asked me for an application for a piece of school land, and I had one made out and sent it to him. Then it was returned to me filled out and signed and acknowledged, with the notary's seal together with check for \$25, and I sent it on to Sacra-



mento with a power of attorney. In due time an approval was received. Mr. Hart paid the money to send to the County Treasurer, and in due time the certificate of purchase was received, and this was sold to C. W. Clarke. To the best of my recollection, C. W. Clarke relinquished the land to the United States, and selections were made in part, and there my knowledge ends, except what I have learned, since I came to this court-room.

Application 2514, Joseph Dixon. This came to me through Mr. Hart. I made the application out with a description of the land in it, and sent it to him. It was returned to me filled out with the name, Joseph Dixon, duly acknowledged and also power of attorney and check for \$25, which was the state filing fee.

That is, the power of attorney to represent him at the Land Office. In due time, it was approved, Mr. Hart provided the money, payment was made, patent issued, and land surrendered to the United States. The state patent was issued to C. W. Clarke.

Application 12,309, D. J. Cullen. George H. Perrin brought this to my office.

Application 12,313, E. J. Foster. He was one of the owners of the Grand Hotel bar. George H. Perrin brought this one.

These two applications were brought to me by Mr. Perrin, from some friends of his, together with the money; and I sent them to Sacramento to be filed in the State Land Office. A power of attorney was received with these applications and sent to Sacramento, and in due time the approval was issued and returned; and I made the payment and got the certificates of purchase, which I delivered to Mr. Perrin.

Cullen's application was received and filed March 3, 1898. The certificate of purchase was issued September 13, 1898; and the patent was issued October 16, 1899.

There was a year and nineteen days in the Foster case between the filing of the application and the issuance of the patent.

In the Margaret Andrews case, certificate of purchase was issued April 18, 1898, and the patent was issued March 6, 1899.

In the Tillie Fleishauer case, the certificate of purchase was issued April 15, 1898, and patent was issued February 23, 1899.

In the O. T. Zimms case, certificate of purchase was issued February 28, 1898, and patent was issued April 16, 1899.

Application 6470, James Mason. I received this application from M. Friedlander, together with \$25, the filing fee, and the power of attorney to represent the applicant in the State Land Office. I filed the application in the State Land Office. It was approved and the certificate of purchase issued April 12, 1898. The certificate was assigned August 10, 1899, to C. W. Clarke, and the patent issued to him October 26, 1899.

I did not furnish any of my own money in connection with any of these applications, and when these assignments were made of the certificates of purchase to C. W. Clarke, I had no interest in them, except a commission for selling them; and I had no interest in them with Mr. Clarke or anybody else after they went into his hands.

I have examined the papers to determine whether I had anything

1282 to do with these various patents mentioned in the indictment with relation to the relinquishment to the United States after the patents were delivered to the persons who owned them. I had nothing to do with the patents that were assigned to C. W. Clarke by these persons mentioned in the indictment, to-wit, Joseph Wineberger, Margaret Andrews, Miss Fleishauer, Mr. Foster, Mr. Cullen, Mr. James Mason—they are all the names mentioned in the indictment.

I never had a colored office boy. I know Mr. Greenblatt, but I never sent any papers either to him or to Mr. Tricon by a colored boy. I heard his testimony here, and I never made a contract or agreement with him to the effect that I would send him papers to have his seal affixed on them where the persons did not appear. Whenever I sent him papers, I sent the people with them. I do not remember ever sending him any papers; and I cannot recall to mind ever sending him any papers of people residing in or about San Francisco with any list or anything of that kind, of any directions.

In buying and selling forest reserve and state scrip in the year 1898, 1899 and 1900, I became familiar with the price at which it was bought and sold. Scrip like the Cascade Range Forest Reserve scrip varied according to the situation of the land, from \$1.25 to \$1.75 an acre.

From the time that I commenced to do business with Mr. Hyde up to the time I ceased to do business with him, I never did have any joint school land forest reserve selections with him.

#### Cross-examination.

By MR. BAKER:

1283 I never filed a dummy application. I never used dummies in filing applications. Whenever anyone wanted to take up some land, they would come to me and tell me that fact, and if I knew of any land that I could recommend to them I would so state, and if it was agreeable to them, the application would be made out and filed. I did not solicit parties to take up land, either myself or through others; and did not send anyone around to lodging houses to get applications; and I never went with Dr. Perrin to get any applications. I was never interested in any applications with him. Dr. Perrin and I did not get titles from the State of California by the use of persons who were not bona fide applicants; and neither I nor anybody for me ever went around to secure applications for school lands by paying them small sums of money.

I have lived in California about forty years. When I first went to California my business was in connection with surveys. I worked first under the mineral law, as a United States deputy mineral surveyor.

Mr. Lavenson made his trip to Oregon either the late winter or the early spring of 1903. I was at my ranch when he went. My ranch is 51½ miles by railroad from San Francisco. It was several weeks after Mr. Lavenson's return from Oregon before I saw him. I left

for Washington, D. C., the last of November, 1903. I went back by way of New Orleans.

I had my conversation with Mr. Hewitt in Takoma, Washington, in the latter part of the spring of 1903.

Very shortly after Mr. Lavenson told me of his trip to Washington, I came East to New York, and on my return West I saw Mr. Hewitt at Takoma, Washington. I cannot state the month.

1284 It was about the middle of the spring. I did not come to Washington, D. C., on that trip.

From the time of the passage of the Act of June, 1897, down to February, 1904, I visited Washington, D. C., three or four times in regard to the lieu land matters. The first time, I think, was in the latter part of 1897. That time, I did not visit the Land Office. I saw Mr. Harlan or Mr. Valk on that occasion. I remained in Washington on my first trip, several days.

"By Mr. BAKER:

"Q. I will ask you whether or not you saw Mr. Harlan or Mr. Valk? A. Yes sir.

"Q. Will you state the circumstances under which you met those gentlemen?

"Mr. CAMPBELL: I object on the ground that it is incompetent, irrelevant, and immaterial, and I now instruct the witness, with all due deference to the Court, and counsel, not to answer the question.

"The COURT: I think your question should be more pointed, and should show that it is one the answer to which would affect his credibility, or might affect his credibility.

"By Mr. BAKER:

"Q. I will ask you whether or not you made a contract with Harlan to pay him any money in regard to these lieu land selections—or an agreement?

"Mr. CAMPBELL: To that I make the same objection on the same ground, and I give the witness the same instruction, if  
1285 your Honor please.

"The COURT: Advice, you mean?

"Mr. CAMPBELL: Advice, yes, on the ground that it is here in evidence that they have indicted this man for those particular things, and are endeavoring to try that case——

"Mr. BAKER: We are not, at all.

"Mr. CAMPBELL: I advise the witness that he does not need to furnish any evidence against himself in this case or in any other.

"The COURT: The holding of the Court is that counsel for the Government have a right to ask the witness about this matter as affecting his credibility as a witness, just as they would have a right to ask him, under the permission of the Court, about any dishonest matter, and if he admitted the matter the jury would have a right to consider it as affecting his credibility as a witness. I do not admit it or allow it for any other purpose. Within those limits I think he may answer."

\* \* \* \* \*

"Mr. CAMPBELL: I advise the witness, with all due respect that he has the right himself to refuse to answer that question on the ground that it would be furnishing evidence against himself in another criminal prosecution.

"The WITNESS: Shall I answer?

"The COURT: I think you should answer.

"The WITNESS: At present I refuse to answer the question on the advice of counsel.

"By Mr. BAKER:

1286 "Q. I will ask you why? Is it merely on the advice of your counsel that you refuse to answer? A. And because it might be furnishing evidence in another case."

Several other questions of a similar nature in regard to his dealings with Harlan and Valk were asked the witness by counsel for the Government, to which there were similar objections by his counsel and rulings by the Court, that he should answer; but the witness declined to answer any of such questions for the same reasons already before stated.

*John A. Benson (Resuming).*

In my testimony of yesterday, I was asked when I first received my information and from whom, regarding the suspension order of November 21, 1902, and I replied from Britton & Gray, or my information from letters from Britton & Gray. I thought I had some of those letters. When I said that, I had another matter in my mind, and my recollection now is that I received information from other people before the time I had correspondence with Britton & Gray regarding the suspension order. I am not positive that I received any information about it from Britton & Gray.

Cross-examination.

By Mr. BAKER:

Neither I nor my counsel have been to see Mr. Browne, of Britton & Gray, since my testimony yesterday, and no one since yesterday has called my attention to the fact that Britton & Gray might  
1287 have copies of letters to me. I cannot state what letters from Britton & Gray to me were in my papers which were destroyed by the San Francisco fire.

I heard of the defect in the Oregon titles prior to the suspension order of November 21, 1902. I heard of it through Chester L. Hovey of San Francisco, and Walter L. Bickford of Butte, Montana, I think, during the summer of 1902.

I did not know of the Holsinger report until after the Hermann trial.

It is agreed between counsel for the Government and for the defendants that the Hermann trial referred to by the witness was the trial of Binger Hermann, which occurred in the Supreme Court of

the District of Columbia from the 12th day of February, to the twenty-seventh day of April, 1907.

Mr. Harlan did not send me the substance of the Holsinger report. When I came here for trial the last term, my counsel, Mr. Birney, received a copy of that paper—the Holsinger report—from Mr. Worthington, who was counsel for Mr. Binger Hermann, and Mr. Birney gave it to me to read.

I first heard of the fact that Schneider had made a statement in regard to the land titles about the early part of December or latter part of November, 1902. I got it from a statement, a little note in a letter, received presumably from Mr. Harlan. Before I received that statement I don't remember that I knew of the suspension order of November 21, 1902.

Mr. Lavenson went to Oregon the late winter or early spring of 1903, and that same spring I came East to New York, but  
1288 did not come to Washington. I stayed in New York one day. I do not remember Mr. Dimond being at my hotel in Washington and putting him in a closet and bringing Mr. Harlan in the room. I never told Mr. Harlan that I had an agent here in the office of Britton & Gray, and wanted Harlan to meet him.

I came to Washington three or four times after 1897, down to the filing of this indictment in February, 1904—in the latter part of 1897, in the fall of 1899, in the late spring of 1902, and in December, 1903. I think I saw Mr. Dimond in Washington on the occasion of my trip in 1902. I saw him at the office of Britton & Gray. I do not think Dimond came to see me at my hotel on that occasion. My best recollection is that he did not. I was in Washington in December, 1903. I saw four or five of my clients in reference to these alleged defective titles. I did not have any conference with Mr. Hyde in relation to the matter of these alleged defective titles at all, except that I complained to him that the titles were bad, and I should hold him responsible for them. I had no conversation with him at all relative to Schneider, or keeping him quiet, or anything of that kind. I never talked with him at all about Schneider until after the suspension order, and then I saw him in San Francisco and said, "Mr. Hyde, what do you mean by having a man like Schneider make such statements as he did about me?" I had found out about Schneider's communication, presumably from Mr. Harlan, in Washington. This was inferential information from  
Harlan. It was later that I got the positive information.

1289 I made a contract with Mr. Hyde on September 12, 1898.

We were a month or more negotiating the contract. I had been out traveling, soliciting clients for purchase and sale of forest reserve selections. Mr. Hyde had agents out as I understood, on similar business, and he noted the fact that I had been more successful than he had, and he stated to me that the expense of selling was considerable, and, as I seemed to be successful, he asked me if I could not sell some scrip for him, and save him that expense, and then we executed the contract of September 12, 1898. The first talk we had about entering into the contract, I think, was preliminary, and over the telephone. Then, at his request, I called

at his office and the matter was discussed. I visited his office, but not very much—he did not come to my office as frequently as I went to his.

In 1897 I had a very extensive business. I had all the records and information about the titles to State lands, their disposal and acquirement, and other things in that line. I kept my records indexed daily.

I knew where the forest reserves and the school lands were in the State, and from my own experience and knowledge where the forest reserves might be.

Counsel for the Government thereupon showed to the witness Exhibits 96, 97 & 98, being three slips containing descriptions of selected lands and lieu lands—Exhibit 96 in the name of C. W. Clarke; Exhibit 97 in the name of F. A. Hyde; and Exhibit 98 in the name of Henry S. Morris—and being the same Exhibits 96,

97 & 98 which were shown to and testified about by the 1290 witness Miss Marion L. Doyle and the witness William E.

Valk; and the witness was asked if he had ever seen them before. To which he replied: I have, yes, sir. Have had them in my possession. I got them from Mr. Hyde, and I sent them to Mr. Valk.

The witness was then shown Exhibit 490, heretofore referred to in connection with the testimony of several witnesses on behalf of the Government, the same being a type-written list of fifty-six forest lieu selection cases pending in the General Land Office at Washington, D. C., as shown by former testimony. With respect to said Exhibit 490 this witness testified as follows: I think I have seen this document before. I think I have seen it in San Francisco. It resembles writing on a typewriter which I had, but that looks like work from my office. I think I saw it in my office in San Francisco.

"Q. I will ask you whether or not you know what you did with it? A. I am not positive about that.

"Q. To what does the subject matter of this paper refer, this Exhibit 490? A. It refers to forest reserve selections in the townships therein enumerated.

"Q. In which you were interested? A. Yes sir.

"Q. In which Mr. Hyde was interested? A. Under the contract of September 12, 1898, yes sir. In the main. I have not examined all the selections in detail, but that is my impression.

1291 "Q. Do you know when this exhibit was prepared—about what time? A. I do not; no sir.

I don't remember exactly when I first knew that Mr. Dimond was going to Washington. Before he left for Washington, whenever I met him, I spoke to him pleasantly; had no direct conversation with him that I can remember.

The witness was here shown a letter from him to Dimond of April 11, 1902, referred to in connection with the testimony for the Government as Exhibit 77 and the witness stated that he wrote the letter to Mr. Dimond. I knew Mr. Dimond was in Washington prior to that letter but I did not know he was here in connection with the lieu selections in which I was interested.

Q. This letter says, "On February 15th, 1900, *we* filed in the United States Land Office at Vancouver, Washington, the following applications under the Act of June 4, 1897." I will ask you who are the "We" in that case? A. I should judge Mr. Hyde and myself, under the Oregon contract.

When I came to Washington in May, 1902, I discussed with Mr. Dimond his employment in the Aztec contract. I discussed this matter with him in the office of Britton & Gray. That is the first conversation that I had with Mr. Dimond about it that I can recall. I think some letters passed between us prior to that time. Mr. Dimond was here in Washington and there were some details in reference to that transaction that were *carried*, and as he was on the ground, I employed him. That was about the latter part of the year 1901, when I was negotiating with the Seligmans of 1292 New York, in reference to the Aztec contract.

"Q. How did you employ him—by letter or telegram or orally or how? A. By various letters that have been introduced in evidence here.

"Q. I will ask you to take the exhibits, commencing with September 12, 1901, and point out the one you claim is the letter of employment. A. I do not think that there is any definite letter of employment other than the letters themselves."

The first information I received regarding the Aztec matter was from Mr. Lilienthal, of San Francisco, who was acting as agent for the Seligmans. It was then proposed that the San Francisco Mountain Forest Reserve be enlarged, but before its enlargement they were required to designate to the Secretary of the Interior certain bases of restricted land that was to be selected before the reservation was made, and they were required to give to the Secretary of the Interior a list of the lands in advance, which they would select of what is known as restricted land; that is, to the east and south of the thirty-second parallel of latitude and *the* south of the Tehatchipi range of mountains.

That was a condition prerequisite, as I understood it, to the forming of the reservation.

The contract that I was about to execute with Seligman depended on this execution of the land that they would select. Mr. Hyde had hold of this matter also, and I learned from him that he had clients in southern California who could designate at once 15,000 1293 or 20,000 acres of this land. For that reason, as I was unable to furnish it, I agreed to give Mr. Hyde a one-half interest in the net proceeds in the contract, if I secured it. Mr. Dimond was to attend to the details relating to the execution of the contract. He had no interest in the contract except to be paid for his services. This Aztec contract was made with Mr. Hyde in the early part of the fall of 1901, and continued down to the middle of the spring of 1903, I paid Mr. Hyde money in reference to this Aztec contract, and also in relation to the Oregon lands. I gave him my note for \$13,000 but since then I have not paid him any money on account of that note. This note was dated something like a year and a half

or two years after the Oregon contract of September 12, 1898, was entered into.

The \$13,000 note is in suit in the Superior Court of the City and County of San Francisco. I had no interests with Mr. Hyde save and except the interest evidenced by these two contracts. I was keeping them at that time. We were interested together in these two contracts; and had a great deal of business together in relation to those contracts.

Mr. Hyde sued me for the collection of this note of \$13,000. I had a great deal of business with Mr. Hyde in relation to these two contracts, and our offices exchanged a good deal of business in relation to them. Mr. Hyde and I were never very friendly—we were only friendly in business matters, for business reasons. Otherwise, we had nothing to do with each other. I would go to his office and see him when it was necessary, and he would occasionally come to my office. I refused to pay him any more money on the Aztec contract after I learned of the alleged defects in the Oregon titles.

In my business, I sent my clients to various notaries in San Francisco—Mr. Burnes, Mr. Knox, Mr. Greenblatt, Mr. Lyon, and also to Mr. Tricou. Sometimes, I paid Mr. Tricou in cash, and for a short time I think he rendered me bills. I paid Mr. Burnes in about the same manner. I never sent any papers to Mr. Tricou to be acknowledged, without the parties going before him. I do not think I ever did any business with Mr. Tricou in the years 1897 down to 1901. I never sent any deeds to Mr. Burnes to be acknowledged, without the parties going with them, or Mr. Burnes coming to my office to see the party making the acknowledgment. The same thing is true about affidavits. I never had Mr. Burnes go around with my brother to tenement houses and get applications to purchase.

Generally speaking, I think I sent the money along each time the party went to Mr. Greenblatt—for a short time I think there was a running account between us.

I never went to the office of a notary by the name of Ellis with Mr. Hart, to make an agreement with him to execute papers and ask no questions, and the notary refused to do it. I never had any such conversation with Mr. Ellis, the notary; and I had no such understanding with Mr. Greenblatt.

I never went to Mr. Greenblatt's office personally, except once, and then the party making the acknowledgment was along.  
1295 One of the reasons why some of the attorneys had a custom of sending their applications up to Sacramento by other attorneys, when they would be going up, was because there were attorneys in Sacramento who made a business of daily visiting the State Land Office and scanning the applications and, if possible, securing action on applications for their clients before the applications which were sent up by attorneys could be considered in due course of office business.

At this point, the witness named several such attorneys in Sacramento.



Generally speaking, Mr. Hyde and I were always rivals in business, and trying to get ahead of one another; and if I had papers of my own to file at Sacramento, I would not take up Mr. Hyde's; I would examine my own papers before I received Mr. Hyde's, and tell him that I had papers of my own.

All the time, but more particularly in 1903, there was more or less of a race between Mr. Hyde and myself as to who should first file applications, and in 1902 there was great rivalry between Mr. Hyde and myself in relation to filing applications for school lands in forest reserves. We were not acting wholly together then. He had his clients and I had mine, although, sometimes, I filed papers for him. I filed a good many applications for him in 1902, and received some approvals for applications which I filed for him in 1902; but we were not acting together in regard to certain proposed forest reserves, or getting applications for school lands within these reserves. From having traveled over the state during many 1296 years, and from having seen all the forests and the forest reserves, and knowing the situation of the land, personally, I would know, if a forest reserve was to be made, quite nearly the location where it would be, and I had information contained in telegrams in response to telegrams I sent to this city—Washington City—and in this way I had knowledge of such proposed forest reserves, and I often gave my clients the benefit of this knowledge. I would talk with clients about land in various places, and sometimes they would leave it to me to select the lands. I could have gone straight to any of the lands mentioned in these applications, which I filed. I knew the boundaries and marks.

I never talked with Mr. Zinn on the subject at all. I do not think I talked with Mr. Lilienthal about it. I do not think he knew where the lands were. I think he left that to me. I knew where the land was and could have gone to it. I did not tell Mr. Lilienthal it was on the top of a mountain; not to my recollection. I don't think he knew where the land was, when he took the paper away with him, or whether it was mountainous or otherwise, or whether anybody was in possession of it. I gave him no direct information on the subject, to my recollection.

I did not tell Joseph Weinberger, Gustav Newburger, Margaret Andrews, or Tillie Flieschauer about the lands other than what was contained in the papers themselves, and so far as I know none of them had any knowledge of the facts contained in the papers except what they got from the papers. Some of the applicants were quite 1297 careful about asking these questions; some of them were not.

I can name some of them that were, who are not in this testimony, that I remember. I think I had a conversation with Isaac Liebes. I don't think there was anything said when I prepared the applications or when I talked with the applicants or their agents, about the value of the land or whether it was worth \$1.25 an acre. That is, not to my recollection. I don't remember of their asking anything about it at all.

When I went around selling scrip, the scrip was in the name of C. W. Clarke, that is, so far as transactions emanating from my

office were concerned. As to the transaction which emanated from Mr. Hyde's office, that is as to the Oregon land, or in some small instances substituted bases for land which Mr. Hyde had used under the terms of the Oregon contract, it was principally in the name of C. W. Clarke, A. S. Baldwin, F. A. Hyde & Co., F. A. Hyde, Flora Sherman and H. S. Morris.

C. W. Clarke is an old resident of California, who came there in the pioneer times. He has been a banker, cattle raiser, dealer and speculator in lands, and a money lender.

I acted as the agent for Mr. Lilienthal in making the sale of the O. T. Ziuns land to C. W. Clarke. Mr. Clarke gave me the money to pay Mr. Lilienthal, and I paid him. That is my recollection. I paid Mr. Lilienthal \$650, or about that amount, and also the amount he had expended. I did not get anything at all, as it is not yet a completed transaction. I got nothing so far as Mr. Lilienthal is concerned.

1298 "Q. Well, now, what is your contract with Mr. Clarke, as to what you are to get? A. I cannot tell until these matters are settled.

"The COURT: The question is what your understanding with Clarke was, as to what you should have, as to what proportion or what share; that the terms between you were.

"The WITNESS: There were no definite terms, but at times he allowed me to take from 15 to 20 per cent of the net profits. At other times he did not.

"By MR. BAKER:

"Q. Is it not a fact that Mr. Clarke put up the money, and the lands were put in his name as collateral security, and you paid him for the use of the money—just in the same way as in the Oregon bases that were in the name of Clarke, and he put up the money there? A. At first, yes, in one or two cases.

"Q. In cases in this indictment? A. I don't think so."

At the time of the suspension order of November 21, 1902, Mr. Clarke held my notes and held all the school land bases as security for the notes. That is, all the forest reserve titles which I had been instrumental in purchasing for him.

"The WITNESS: After one or two cases had been sold in that way I asked him for a settlement based upon these cases. He made the remark "them's mine." Those were his words; and he said that until all my business with him was settled he would not recognize me in any manner whatever, but would hold the titles which he had as his own."

1299 There were transactions between us wherein to help myself along I borrowed money. There was business which I did for him wherein I located land for him under state lien applications. I cannot state positively how much I owed Mr. Clarke in matters growing out of the land purchases in this case, at the time of the finding of the indictment. I borrowed money from him to purchase cattle and other things, and the total amount of my indebtedness was, as nearly as I can remember, somewhere near \$40,000 alto-

gether, that is with accumulated interest. \$10,000 of it, however, grew out of an old transaction of years ago.

I thought that these lands might become more valuable for the purpose of exchange under the Act of 1897, but some of the lands that were obtained by applicants through me were more valuable intrinsically from the timber that was on the lands than for exchange purposes under the Act of June 4, 1897, and there are some of the persons whose names are mentioned in the bill of particulars in this case who obtained lands and who have retained them for the timber that was on them, and who have not surrendered the property to the United States, although this property was in forest reserves.

I do not know how Mr. Dimond came to enter his appearance in a case in the General Land Office where some of the base land emanated from my office—it may be that C. W. Clarke applied some of this base to supply deficiencies in his other selections.

The witness's attention was thereupon again called to Exhibit 490, heretofore referred to, and to forest lien selection No. 1300 3611 mentioned in said Exhibit 490, and to the fact of the appearance filed by Henry P. Dimond as attorney for C. W. Clarke the selector.

And the witness was asked to tell how Mr. Dimond's appearance came to be entered in a case such as No. 3611, in which the base for the selection emanated from his office; that is, whether he knew how Mr. Dimond came to appear in it. He answered: I do not.

The attention of the witness being called to the fact that the same lands are described in selection application No. 3611 as are described with respect to the same selection No. 3611 in Exhibit 490, he was asked how he accounted for having a description of the land in Exhibit 490, if this selection No. 3611 was not one of his cases in the land office. He answered that he could only give a theory, and that theory was that C. W. Clarke must have applied this base to supply deficiencies in his other selections.

Redirect examination.

By Mr. CAMPBELL:

I stated this morning about receiving some word from the person whom I thought was Mr. Harlan. I was at San Francisco when I received the letter. I do not have the letter now. I showed this letter to Mr. Frank H. Platt, of New York—he was one of my counsel in New York in this case. Those letters were destroyed in the San Francisco fire.

The substance of that letter was something like this, as near as I can remember—

1301 “One J. H. Schneider of Tucson, Arizona, reports that you and H. had been using dummies to secure school lands in California and Oregon. The applications were made by F. A. Hyde & Co. You are the ‘Co.’”

That is all of the substance of the letter that I can recollect—the letter was not signed.

When I received this letter I called Mr. Hyde up on the telephone

and stated to him the substance of the letter that I had received, and asked him what was meant by it. Mr. Hyde said he did not know. He said that the rest of the letter was probably as true as the statement that I was the "Co." of F. A. Hyde & Co. Mr. Hyde said that Mr. Schneider had ceased relations with him and had gone to Arizona, and that he had no business with him, and that he had not heard from him for several years.

In speaking of my knowledge of the forest reserves, and as to whether or not I had filed applications within proposed forest reserves, I said that I have also, in a good many instances, filed applications just over the line and outside of proposed forest reserves; as the definite withdrawals afterward showed; and also, in some cases, I filed applications for clients entirely without the forest reserves, or temporary withdrawals.

I paid Mr. Dimond's traveling expenses in relation to the Aztec contract, and I expected to pay him for his services. There was no definite amount agreed upon between us, for the reason that there were other kindred deals in contemplation, and upon the measure of success in those kindred deals, in a great extent, would depend his compensation in the Aztec matter. Those other deals  
1302 were not carried through. In the proceeding in New York, for my removal to this court for trial, the defendants produced no witnesses except witnesses to identify papers, and so forth. I did not take the stand and neither did Mr. Lavenson or Miss Glover. As near as I can fix the time, I had the conversation over the telephone with Mr. Hyde as to the contents of the note I received from Mr. Harlan about Schneider, it was either the very last of November or the very early part of December, 1902. I do not recall anything in that letter about Mr. Slack's name, and I do not remember mentioning anybody's name to Mr. Hyde except Mr. Schneider's. I know I did not mention Mr. Harlan's name. I never, at any time, told Mr. Hyde directly or indirectly, anything at all about my financial relations with Mr. Harlan, or anything, directly or indirectly, about my financial relations with Mr. Valk. And I had no knowledge that Mr. Hyde ever had any information as to my relations with either Harlan or Valk up to the time of the suspension order. I never had any interest of any kind in the firm of F. A. Hyde, or F. A. Hyde & Co.

I think I stopped at the Shoreham Hotel when I was here in Washington in 1902, and I think that that was the time when I saw Mr. Dimond at Britton & Gray's office, in Washington. I had no interest with Mr. Hyde, except two contracts, first the contract of September 12, 1898, and the Aztec contract.

In regard to identifying land, and as to whether I could go to see a certain tract of land and find it; when these surveys were  
1303 made by the Government on the subdivisions and sections located, generally marks were made, to show where the subdivisions were and where the townships and sections were. They were generally marked by posts and stone mounds—generally wherever a post was used the corners of a section are marked, as well as the township and range. There were also bearing trees given, and

those bearing trees were marked in a like manner, with the addition that the bearing trees were blazed and that, at the time, a small notch was made on each and were marked with the letters "B. T.," meaning, "Bearing Tree."

Up to the time of the finding of this indictment, in reference to those affidavits in the cases with which I was concerned, as to the character of the land and as to its non-occupancy, and so forth, there is only one case that I can remember which has been mentioned in the proceedings here, and with which I was concerned, in which it ever turned out that the land was occupied, where it was sworn that it was not occupied—and that was the case where there was a contest as to a prior state application which was supposed to have expired by limitation; but the contest right was claimed, and the applicant abandoned that part of his application which was in conflict, and I do not know of any case with which I was concerned, and which is in evidence here, up to the finding of this indictment, that the land was not of the character described in the affidavits.

In reference to this matter of my own knowledge as to the character of land, there was information contained on the plats and in the field notes, accessible in the Land Office, copies of which  
1304 I had in my office, and there were *were* some of the plats there of the character that were put in evidence in this case; and I was very well acquainted in that way with the character of the land in these mountainous regions of California which figured in the forest reserves.

During the years 1897 to 1904 it was my understanding that in making applications for school land in the state of California, it was not necessary that the applicant should have personal knowledge of the matters stated in his affidavit, except in cases where the plat of the township had not been on file three months—I was poor, and very rarely had the money to put up for school lands. There are only eleven cases mentioned in the indictment in this case, with which I had anything to do with the filing of the applications or getting the land from the state, either as attorney or in any other way, and these eleven cases are all mentioned in four counts of the indictment, and these cases are, Margaret Andrews, Tillie Fleishauer, Joseph Wineberger, and the Liebes family—there are seven in the Liebes family, also James Mason.

The ranch where I was when Mr. Lavenson returned from Oregon, and about which I spoke, is in Contra Costa County, about 51½ miles from San Francisco. It contains about 1400 acres of very mountainous land, worth from \$1.25 to probably \$4 or \$5 an acre.

Referring to the Holsinger report, I have no knowledge whatever of any advertising for clerks or other employes and getting answers to such advertisements in that way and then using those  
1305 names or parts of those names for filing fictitious applications for land in California, or anywhere else; and up to the time of this indictment I had no knowledge or information about it except as contained in that Holsinger report. I do not know such a man as James McAvoy, of Martinez, California, mentioned in that report, nor a McAvoy of any other place.

Referring to that part of the report which says, "James McAvoy, of Martinez, California, applied for one of the positions and Schneider was directed by Benson to use this particular name, changing, however, the given name from James to Calvin A. A blank application was now made out for Calvin A. McAvoy, Schneider using the genuine signature of McAvoy as a copy, and carefully imitating the handwriting of McAvoy"—that is an unqualified falsehood—there is not the least foundation for it.

"Q. Without going into, in detail, the language of this report or statement (Holsinger report) I want to ask you what you had to do with the filing of any fictitious applications for state land in California or Oregon, at any time. A. Never anything, at any time.

"Q. Had you any knowledge or any suspicion in the transactions you had with Mr. Hyde, that any titles were founded upon applications of that kind. A. I had no knowledge.

"Q. Up to the time that you heard of the suspension order of November 21, 1902, what knowledge or suspicion had you, if any, that Mr. Hyde was concerned in any wise with the obtaining of state lands from California or Oregon by the use of forged or fictitious names or applications, or any other papers? A. No knowledge at all.

"Q. What, if anything, do you know about the genuineness or the unguineness (if I may use that word) of the signatures of Elizabeth Dimond which have been referred to here? A. Nothing whatever. I never saw her signature until I came into this court room.

"Q. Up to the time that your dealings in connection with Mr. Hyde entirely ceased, what knowledge or suspicion have you that Elizabeth Dimond was not a real person, and that her application was not an honest and genuine one, and all the proceedings based upon it? A. I had none."

I never learned that it was suggested by anybody that Mr. Dimond, the defendant here, had been sent to Washington to make an arrangement of some kind with some clerk in the Department, or of any kind, with reference to giving information.

Up to the time I came here about a year ago and Mr. Birney then showed me what purported to be a copy of the Holsinger report, I did not know that anything of that sort was charged in the Holsinger report. If anything of that sort—sending Mr. Dimond to Washington to make arrangements with a clerk in the Department to give information—was done, it certainly was not done with my knowledge or acquiescence.

Further redirect examination.

By Mr. WORTHINGTON:

There was a rivalry or controversy between us in relation to selections under Section 2275. That is, what is known as state lien selections; and also in relation to the acquisition of lands under the other grants, belonging to the State of Cali-

fornia. The difference between us had arisen at least ten years before the act of 1897.

I had no relations with Mr. Hyde in the year 1897, and we did not have any business relations with each other until after the contract of September 12, 1898; and until that contract of September 12, 1898, we had no relations with reference to lands to be acquired from either California or Oregon.

In the year 1897, and when I had no business relations with Mr. Hyde, I saw Mr. Harlan and also Mr. Valk in Washington, in the latter part of 1897, at Captain Thomas' office in the city of Washington; and either then, or later, I stated to Mr. Valk that my object in getting business through the Land Office was to get ahead of Mr. Hyde. I do not remember exactly when that was—but this was at the first interview with either Mr. Harlan or Mr. Valk—which one I cannot remember, because their visits were close together. I never gave to Mr. Harlan or Mr. Valk a memorandum or note of any case except that in which I was myself personally interested, either under the contract of September 12, 1898, or otherwise.

The custom of which I have spoken, of land attorneys in San Francisco filing applications for one another, began, so far as Mr. Hyde and I were concerned, in 1902; and to the best of my recollection, I cannot recall any application in which Mr. Hyde  
1308 was interested being filed by me or through my office prior to 1902, and none were filed by him for me.

I had been engaged in the business of dealing in base lands in California for others for thirty-five years—back to the seventy's. Prior to the passage of the Act of 1897, there were large quantities of land being taken up by men *in* interested in securing titles for themselves, and the business that I and others were engaged in was very large. There was a very large business prior to 1897, going on in the way of people getting titles to the lands of the State, either as individuals who were entitled to make application, or persons who desired to purchase them from people who had gotten the title; and that business had been going on since the organization of the State, and is going on to this day—without reference to whether they are still State lands or United States lands within forest reserves.

In 1902, I sent some telegrams to Britton & Gray and received replies from them giving me information as to withdrawals and so forth—not in the regular course of business and not as a regular employment by that firm—but questions that I asked them incidentally by telegram as to proposed forest reserves. Perhaps there was some correspondence too. I got information from them as to several withdrawals from forest reserves.

Recross-examination.

By Mr. BAKER:

The custom of one land attorney in San Francisco filing applications in the State Land Office for others was more or less  
1309 prevalent for a good many years; but it became especially prevalent in 1902. Mr. Hyde and I were emphatically



rivals in the State indemnity selection business—each was trying to secure for himself and clients as much business as he could. After I discovered the complaint in regard to the alleged defects in the Oregon titles, I am positive that I did not take any further proceedings in any case in the Land Office, based on the Oregon titles. At the time I informed Mr. Harlan and Mr. Valk that Mr. Hyde and I were rivals and that I wanted to get ahead of him in the Land Office, it is not a fact that Mr. Hyde and I were interested in a large number of lieu selections then pending in the Land Office. That conversation occurred before I made the contract with Mr. Hyde on September 12, 1898.

1310 At this point, counsel for the defendant Hyde produced as witnesses David M. Kindleberger, Charles E. Bright and Charles D. Radcliffe, who, having previously qualified as experts upon handwriting, examined the various papers having the signature Elizabeth Dimond heretofore examined by the witness Shearman, the handwriting expert on the part of the Government; and these witnesses each testified that the signatures on the various papers "Elizabeth Dimond" appeared to be fair signatures, and all written by the same person, and that those signatures were not written by the same hand that penned the writings introduced in evidence and admitted by counsel for the defendant Hyde to have been written by said Hyde and used as standards by the witness Shearman, each of the said witnesses giving his reasons in detail for his conclusions.

*Charles A. Keigwin.*

Direct examination.

By Mr. DONALDSON:

I reside in the District of Columbia. I am an attorney and a member of this Bar, and have been since 1890.

For a little over two years I was Assistant United States Attorney in and for the District of Columbia. I have known the defendant Hyde for about eighteen years. For about three years I was employed in the United States Land Office in the City of Washington, and severed my connection with that office in 1891. Beginning the 1st of January, 1891, I left the Land Office, and beginning the 1st of February, 1891, and from — time until the autumn of

1311 1896—September or October—I was regularly employed by

Mr. Hyde and his brother, representing them in divers matters of business which they had before the Land Office here—my employment was by the firm of F. A. & M. Hyde, and the business was of two kinds, so far as I could judge from the letters which came to me. A large portion of it was with respect to the selections under the school indemnity law—known as the school indemnity selections. This was all prior to the Act of June 4, 1897. My employment ceased in September or October, 1896.

I have never been employed by Mr. Benson for any purpose that I know of. I never had any correspondence with Mr. Benson at all.



After the Act of 1897, I was employed on two occasions that I think of now, and possibly a third, possibly half a dozen, to represent Hyde in matters arising under the Act of 1897. The only two cases I now remember were cases in which I was employed to write briefs, and, in one of those cases, I appeared before the Secretary of the Interior, whether I participated in the argument or not, I do not now recall. In the other case I appeared before a Committee of Congress and had a brief there—those are the only two cases that I can remember now.

In the former case—the case before the Secretary of the Interior—the firm of Britton & Gray were associated with me in that case.

Neither of these employments had relations to pushing forest reserves. I never was employed by Mr. Hyde to give him any  
1312 information, advance or otherwise, as to the creation of forest reserves or the lines of forest reserves—I could not have given him any such advance information unless I had some sort of improper relations with somebody in the Land Office. I know I never had those. As far as I can recall now, I do not think I ever reported to him the creation of a forest reserve, or made any report relating to the creation of a forest reserve, and I never gave him any aid in reference to pushing forest reserves.

I do not know the defendant Schneider except that I have seen him here since this trial has been in progress; I do not know him.

I do not know the defendant Dimond at all, and have never had any business relations with either him or the defendant Schneider.

Cross-examination.

By Mr. BAKER:

I am not now in the employ of Mr. Hyde, and am not employed to assist in this case. I have had nothing to do with this case on trial.

*W. S. Kingsbury, Recalled.*

Direct examination.

By Mr. DONALDSON:

At the request of Mr. Donaldson, counsel for the defendant Schneider, I have examined the diaries which are in evidence in this case from the year 1896 down to January 1, 1902, for the  
1313 purpose of finding whether those diaries disclose the filing of any application by Mr. Schneider in the base land office at Sacramento.

The result of that examination is that I found that he received filing receipts on February 6, 7, 8 and 9, in the year 1899. Those are the only instances where his name appears in those diaries during all those years as filing applications.

## Cross-examination.

By Mr. BAKER:

I do not know whose applications they were. I did not notice the names. The names of those applications are as follows:

On February 6, 1899, his (the defendant Schneider's) name appears after the name of H. E. Vallejo, William P. Wilson; two applications of John F. Gates, and one of A. L. Hobson.

February 7th, after the name of P. O. Roberts, appears the name of J. H. Schneider, also after the name of Peter Mackey. On February 8th his name appears after the name of Levi Akers.

February 9th, Schneider's name appears after the names of R. J. Griffith, George M. Paris, Thomas Kermode, and John A. Kretchmar, also after the names C. E. Leyerholz, F. J. Harrison, E. A. Hebbard, Joseph F. Gates and C. E. Crowder. Those are the only instances where Schneider's name appears.

I do not know to whom the approvals were sent in those cases.

It appears in these diaries that these approvals were delivered 1314 to "J. H. Schneider in person"—that is the way it reads.

Those are the only instances where his name appears. There is nothing in the books to show, and I am unable to say whether those cases in which Schneider is referred to as having received the approvals in person are school selections or lien selections.

Recalled for further cross-examination.

"By Mr. BAKER:

Q. I will ask you whether you made a memorandum of the cases where Schneider received the filing receipts? A. Yes. On Friday I testified that the lists I had at that time were all the filings I discovered which were made by Mr. Schneider; but on going over the books later I found four more than I overlooked at that time."

I have made up a list or memorandum which shows the number of the location, the land district, to whom the filing receipt was given, to whom the approval was sent, to whom the certificate of purchase was sent, and also a description of the land contained in the certificate of purchase.

The memorandum or list, marked "Kingsbury Chart" was thereupon offered in evidence by counsel for the Government. It appears therefrom that the four additional names referred to by the witness as having been found by him since last on the witness stand are as follows: H. Raymond, Howard B. Howard, Wm. L. Page, and B. E. Sutter.

From said list it appeared that twenty-two applications to 1315 purchase were filed in the California State Land Office by the defendant Schneider, and the filing receipts delivered to him in person; eighteen of the applications being filed in February, 1899, three in June, 1899, and one in July, 1899. The list further showed that approvals in all cases were sent to the defendant F. A. Hyde, and certificates of purchase so far as issued upon said applications were likewise sent to the defendant Hyde, on or prior to Feb-

ruary 1, 1900, with the exception of one which appears to have been sent to a man by the name of N. C. Briggs.

Redirect examination.

By Mr. DONALDSON:

So far as the substance of it is concerned, this list is correct.

"Q. I notice that opposite quite a number of these entries there is a blank under the heading of 'Certificate of purchase,' and the blank continues under the heading of 'Description.' What does that mean? A. It means that no certificate of purchase was issued.

"Q. There was an application filed and it was abandoned? A. There was an application filed and approved, and it was eventually abandoned.

"Q. Will you tell the jury how many cases there are on that list? A. Twenty-two.

"Q. In how many of them does it appear that nothing was done after the approval, and that no certificate of purchase was  
1316 ever taken out? A. Ten.

"Q. Now, will you look under the heading 'Description' and tell me in how many cases the applications were not for school lands, but were for sections or parts of sections other than Section 16 or 36? A. Yes sir; six were lieu selections.

"Q. What do you mean by lieu selections? A. That is selections taken in lieu of Section 16 or 36.

"Q. How many of them were with reference to other sections, and not school sections at all? A. We call all lands held by the State school lands; but it is lieu land or land in place. It is land selected from the United States in lieu of land contained in forest reserves, as a general thing.

"Q. Here, for example, opposite No. 6682, under the name of A. L. Hobson, appear Sections 8 and 9. Those are not school sections? A. They are school lands, but it is land obtained in lieu of certain school sections. It was land which the State had obtained in lieu of school sections.

"Q. Opposite 3183 appears Section 20. Would the same thing apply there? A. Yes.

"Q. Opposite 12522, Section 1. Would the same thing apply there? A. Yes.

"Q. And so opposite 3185, in the name of C. E. Meyerholz, Section 20. Would the same thing apply? A. Yes.

"Q. And opposite 12526, in the name of Meyerholz, Section 13; would the same thing apply? A. The same thing; yes sir.

"Q. Opposite 12527, in the name of E. A. Hebbard, Section 20; would the same thing apply? A. Yes sir.

"Q. The approvals all appear to have been sent to whom? A. To F. A. Hyde.

"Q. And where certificates of purchase were issued, to whom were they sent? A. They were sent to F. A. Hyde, with the exception of 12522, which was sent to a man named N. C. Briggs.

"Q. Do you know who he is? A. I don't know.

"Q. There is nothing there to connect Mr. Benson with any of them, so far as the entries in the books show? A. No sir.

"By Mr. DONALDSON:

"Q. You do not find any case where that was filed after the date you mentioned the other day? A. Yes; there were four filed.

"Q. They were all in the year 1899? A. Yes sir.

"Q. And the sheet shows that the last one was in July? A. I believe it was in July.

"Mr. BAKER: July 28, 1899.

1318 By Mr. DONALDSON:

"Q. The last one was in July, 1899?

"A. Yes sir."

*Joost H. Schneider.*

#### Direct examination:

I am one of the defendants in this case. I was born in the northern part of Denmark. I am fifty-four years old. I came to America in 1873, when I was twenty years old. I could not speak English at that time. In the course of a few years I picked up speaking English.

When I first came to America, I got a job in a green grocer's store at Niagara Falls, N. Y., and remained there until January 18, 1875. Then I went to California, where, in the spring or early summer, I got a position with the United States Coast Survey, helping, near where Santa Monica now is, as a laborer. I remained there until January 1876. Then I went up to Livermore Valley, California, and bought a piece of land. That is in central California, about fifty some miles from San Francisco. I had gotten a couple of thousand dollars at that time from my family in Denmark. I stayed on this farm through 1876, 1877, and 1878—we had one dry year and one wet year and did not raise anything, and I sold that farm for what I paid for it. Then I went to the Sandwich Islands, and remained there about five months. While I was there I was working at breaking saddle horses for a man in Hawaii. Then I came back to San Francisco, Cal. After I returned to San Francisco, my occupation was always farmer, and I went up to the  
1319 ranch in Contra Costa County, called the Hyde ranch. That was in February, 1879.

I had met Mr. Hyde somewhere around Christmas, 1878, just after I had gotten back from the Hawaiian Islands, I worked on the Hyde Ranch (in Contra Costa County), and afterwards on the Orres-Tinba Land Company's ranches in different capacities up to December, 1901, when I left. I was not married when I first went to work on the ranch in 1879; I was married in 1884, and have three children, one boy and two girls.

When I first went to work on the ranches there was one ranch. Afterwards the Tulere Ranch up along the river was added. There we raised alfalfa and potatoes and other things. When I quit there

were four ranches. I began going to Mr. Hyde's office in San Francisco in the '80's; that is, if my ranch business carried me to San Francisco, I would go into his office, in respect to the ranch account, or anything else that had to be purchased or sold about the ranches. I did most of my marketing and purchasing of supplies for the ranches in San Francisco.

In the '80's, and up to 1895 or 1896, I went there quite often; and sometimes I might be away for two months, and then I might be in San Francisco for a couple of weeks. Almost from the start, whenever I would be in the office in San Francisco, and after I had attended to my ranch accounts and business in the office, and would be around the office and had nothing to —, just hanging around, some of the clerks would say, "Schneider, will you help out in this, or help out in that?" And I would willingly do it.

1320 If I was in San Francisco a week, I might be around the office, say, four days of that time. Some of the clerks would ask me to copy a piece of paper or write on a piece of paper, and I was always willing to help—just did anything the clerks wanted me to do if I was around there. So far as the writing was concerned, it might be called clerical. I would not know what to do. It was the clerks in the outer office who would ask me to fill in these papers. That continued right on up to 1899. During those first years, I copied the different ranch maps, but I would not call it knowledge of plats or maps. I got my data right in the office, from the maps which they had, which showed the sections that made up the ranches. I made these copies of ranch maps for the ranch foremen—each foreman of the ranch had his copy, and the foreman would keep it as long as it lasted; but it was made on paper and would wear out, and then I would copy another one for him. These maps would wear out very often. A man would have it in his pocket, riding around in a brushy country.

I first started in on the ranch as a ranch hand, and finally I worked myself up to General Manager of the Orres Timba Ranch Company. I was the Manager of the ranches in the years 1895, 1896, 1897, and 1898—superintendent.

Van Gundy, who was a witness on the stand here, was one of the ranch hands. In the fall of 1898, Mr. Hyde asked me to go to Oregon for him. He spoke to me about it in his office in San Francisco. He gave me some verbal instructions.

"Q. What was the conversation. Tell us what he did tell you. A. He told me to go up to Oregon, to go to Salem and see a man named McCornack and have a talk with him, and then he told me to go out to Portland, or any other place I should go to, and told me to try to get some people to take up school lands, told me that they could take up 320 acres apiece if they had not taken any land, and told me to lend them some money, to lend them *to* money on a note, to pay the first instalment to the state.

"Q. From whom were you to get the money to loan to those people. A. From Mr. McCornack.

"Q. Mr. McCornack is the same Mr. McCornack who was on the stand here? A. Yes sir, the same man.

"Q. What did you do about carrying out those instructions? A. I tried to carry them out when I got up there. I was there for a week or more and I could not get anybody to borrow money and give their notes and take up land. They would not do it.

"Q. I will ask you if Mr. Hyde said anything to you when you first went up there about trying to find people who had their own money to take up land, before you spoke about loaning? A. Yes sir, but I was not in contact with any people who had money. I was a stranger.

"Q. You say you could not find people who would borrow  
1322 money? A. No, I tried, but I could not find them.

"Q. Just what information or papers, if any, did you get from Mr. McCornack? A. I got all my papers.

"Q. What were they? A. They were applications and deeds."

I met Wylie B. Allen up in Oregon. I had a letter of introduction to him given me, I think, by Mr. Sherman, which I took with me from San Francisco, and gave to Mr. Allen.

"Q. State what happened when you met him? A. I could hardly state the conversation. It is over ten years ago, but I brought my letter, gave him my letter, and afterwards told him what my business was, and in the course of the conversation he said he could help me out on that proposition.

"Q. Just what did you say to him? What was your proposition? What were you there for? A. To get some one to take up school lands.

"Q. Did you tell him what sort of people you wanted, that is the people who had their own money? A. I did, but he laughed at me and turned it down, could not do anything with him, so he said he would find somebody to take up school lands, that he might, if he could find anybody that would do that, why all right, and I told him then to go ahead, and gave him a description of some sections.

"Q. You say you told him if he could find anybody to go ahead, and you gave him some descriptions? A. Descriptions of  
1323 sections.

"Q. And he said he would try to get somebody? A. Yes sir.

"Q. What sort of people did you talk to him about getting, people who had their own money, or people to whom you would loan money? A. I first suggested that to him, as my instructions were from San Francisco.

"Q. What did he say about getting people with their own money to take up land? A. He could not get anybody.

"Q. Did he say he could not get anybody to whom you might loan the money? A. I don't remember what—

"Q. Did you meet anybody through him, any one particular individual? A. I can't recall anybody I met through him. He brought me a number of applications."

These applications were all signed and sworn to. The description of the land was filled in, and the man's name and the Notary's name. All these things were in them when Mr. Allen gave them to me. I met a Mr. McCusker (the same McCusker who has been a witness

in this case) through Mr. Allen. I had about the same conversation with Mr. McCusker that I had with Allen, and I gave Mr. McCusker a lot of descriptions and applications. He filled the descriptions in the applications, and when I got them back they were all filled out and signed by the applicant, and sworn to by the notary.

Then I got the applications from other persons. Everybody  
1324 I could find.

They had just started a horse-killing plant a little way out of Portland, and I went up there to look at this horse-killing business, and took some applications with me; and I met some people up there and they signed some applications; and I got some applications from people who ate in the restaurant where I ate my meals, and some applications from people in an employment office, when I also dropped in occasionally.

When I got these applications I would fill them out with the description of the land and after the people had signed them I forwarded them to Mr. McCornack; at one time by an express company.

"Q. Do you remember Don Alexander, the notary who was on the stand? A. Yes sir, I remember him.

"Q. I wish you would state if you met him and the circumstances under which you met him, and what business you had with him there. A. I went up to his office, went into his office with some applications; and some of the other people, I told them whenever they had filled up an application to leave them with Alexander, for him, he did business reasonable."

I told them to fill the applications up and take them to Alexander and leave them there, and I would call for them. I told them to swear to the applications and I would settle with Alexander. I got quite a number of applications from Alexander of people that I had  
told to go there and swear to them before him. When I  
1325 would receive these applications from Alexander, they were

all filled out, all the description of the land was written in and they were sworn to and signed, and the deeds were sworn to and signed. The name of the grantee in the deed was left blank. My best recollection is that the jurat of the notary public was filled in, but I am not positive. Some of the people who signed the applications at the horse-killing plant, and some who signed the applications in the restaurant, I just took to Alexander and told him the people were all right; that is, they were people who had signed the applications, and Alexander certified to them. There were maybe ten or twelve of the applications that were signed by these people that I took up to Alexander, and he certified all of the applications which I obtained, which were real persons. There were some of the people who signed the applications with a lead pencil, and I told them that would not do, and that they would have to sign them in ink, and then they would write their names in ink over the lead pencil names. I do not know with respect to how many that occurred, but I remember the incident. I have no knowledge of any forgery being committed with respect to these or any other applications. Outside of the applicant's writing in ink over their lead pencil signatures, I never used any fictitious names or ever traced

a signature, or forged anybody's name to any application. I think it was in July or August, 1898, that I went to Oregon, and I remained there about four weeks. I returned to San Francisco about the last of August, 1898, and saw Mr. Hyde when I returned. There was not much to say to Mr. Hyde. As I got these various applications signed, I sent them to Mr. McCornack in Salem, Oregon, and my work was finished, and I had nothing more to do. Mr. McCornack sent the papers down to Mr. Hyde. As I got the various deeds signed, I sent them to Mr. Hyde at San Francisco.

When I got back to San Francisco, there was nothing else for me to do. My work was finished. When I got down to San Francisco, I think all of the papers had been sent in to Mr. Hyde. I did not make much of a report—I said I was back, and told him I thought I had done a pretty good job, and then I left for the ranch.

Before I went up to Oregon, I was receiving \$125 as foreman of the ranches, and no change was made in my salary from that time on. I received the same sum until I left. Mr. Hyde had no conversation with me about changing or increasing my salary before I went to Oregon, or after I came back. My salary was fixed at \$125, in 1885, and no change was made in it from that time until I left in December, 1901—not a cent. I got the same salary. I never expected or received at any time any extra compensation for helping the clerks in the office, or for going to Oregon—my going to Oregon was a sort of pleasure trip. I had never been to Oregon, and while I was there I went from Portland to Walla Walla, and up to the Dales, and down to Astoria, and spent several days at the horse-killing plant, which interested me. I made these little excursions for pleasure.

When I got back to San Francisco from Oregon, I went right out to the Orestimba Ranch, and after that I did not do very much in Mr. Hyde's office in San Francisco—very little, because the ranch business required all my time.

We had started in with about 800 head of cattle and kept increasing them yearly, and I think in 1898 we had something close to 2000 head of cattle; and that was a dry year, and we moved about 800 or 900 head of cattle to our Contra Costa Ranch in 1898. If we had not moved them, they would have died. We moved them in the early summer from Gilroy, the Orestimba Ranch, up to the Hyde Ranch by train, and I went along with the cattle. The Hyde Ranch was at Cornwall, and the cattle stayed there about a year, and then we took them back to the Orestimba Ranch for, in the meantime, it had rained, and the grass came up. It was some time in the summer of 1899 that we moved the cattle back to Orestimba, and after we moved these cattle back we had about 2000 head of cattle on the Orestimba Ranch.

At that time, there were four ranches to look after, and I was General Superintendent and had charge of all of them, and had workmen on all of them under me—fifty or sixty men.

Outside of the copying of the maps of the ranches for the four men, I made a large map of the so-called Lassen Peak. I think



I made that Lassen Peak map in March, 1899. I think I made a couple of those maps. I got the information with which to make these maps from data at the United States Land Office in San Francisco and at Sacramento.

In 1884, when I was married, my wife and I lived on the Hyde Ranch, which is in Contra Costa County—that is called the Cornwall ranch. My family lived there for ten years, and I spent my time going from one ranch to another. In 1894 or 1895, 1328 my family moved to Oakland for school facilities—my boy was getting to be nine years old, and we moved down there to put him to school. Before my family moved to Oakland, I was on the move from one ranch to another all the time, and saw very little of them. Van Gundy, the witness who testified in this case, was employed on the Orestimba Ranch; but my family never lived there. They lived on the Cornwall Ranch. I often went to Sacramento and bought horses up there, and passing through San Francisco in 1899 I stopped and took up some applications for Mr. Hyde to file in the Land Office at Sacramento. I remember I took quite a number up there at one time, early in 1899. But I do not remember just what business called me up there at that time; but I often went to Sacramento. I do not remember filing any applications in Sacramento in July, 1899. I just handed them in to the Surveyor General and said, "Here are some applications," and gave them to him. That was all. I told him that they came from Mr. Hyde.

I would settle my ranch accounts with Miss Farwell, who was one of the clerks in Mr. Hyde's office, and had charge of the cash account and my ranch bills.

Mr. C. P. Lyndall was my brother-in-law, and James B. Frontain—I knew him since he was six or seven years old. At the time Frontain made his application, he was employed on one of the ranches off and on—he was sick, and I took him up there to the ranch. A man by the name of Donovan, who filed an application was one of the ranch hands at the Contra Costa Ranch. At Mr. Hyde's request, I asked Mr. Lyndall, Mr. Frontain and Mr. Donovan to sign applications, and I handed the applications in to Mr. Hyde's office. I just handed them in and that ended it as far as I 1329 was concerned. I did not have anything to do with attending to them at any of the land offices, or to see that they were perfected as to title, or anything of that sort. When I spoke to these men about putting in applications, I told them that they would take up 640 acres, and there might be something in it, and there might not.

At this point, the witness is shown application 6737, in the name of H. Raymond, with respect to which the witness says:

(Resuming:) I do not know anything about this application. I do not know H. Raymond. I did not sign his name.

I have no knowledge of either or both of the applications made by C. P. Carpenter; I don't know Carpenter. I made the two affidavits as to the character of the land on the Carpenter applications. The affidavit on each was dated April, 1901; at that time, I was

living on the Gilroy Ranch. The lands mentioned in these affidavits were both pieces right on the ranch. I passed over them lots of times. The whole ranch was all mountainous.

"Q. What, if any, knowledge have you of Elizabeth Dimond or any papers in connection with an application or any cases in which her name has figured here? A. I have this knowledge, that some time—I don't remember when—but when I came to Oakland, somebody at the house—whether it was my wife, mother-in-law, or one of the girls—said that a letter had been received there and forwarded to Mr. Hyde's office in an official envelope, addressed to Elizabeth Dimond, and wanted me to find out if that was right, that it had been forwarded, and when I got to the office I asked one of the girls if they had received the letter, and they said yes, it was all right."

That name made an impression upon me, because my daughter's name was Elizabeth. I remember that very well. I never saw any letter that came to my house addressed to Elizabeth Dimond. I have never, on any occasion, signed the name of Elizabeth Dimond, and do not know of anybody else ever having done it; and I never did sign the name of anybody to any applications, and never had any knowledge of anyone else doing so, or on any other papers connected with Mr. Hyde's business.

At this point, the witness is shown Exhibits 531 and 532, respectively, being the affidavits signed by him as to the character of the land mentioned in the so-called C. P. Carpenter applications, with respect to which the witness testified:

My name is signed to both of those affidavits. That is the land mentioned in connection with the Carpenter application. Those affidavits are true. At the time I made those affidavits I had personal knowledge of the character of the lands embraced in them, upon which to make the affidavits, and when I made those affidavits I personally went before the receiver and swore to them. I never, at any time, myself, signed the name of Jennie P. Blair to any paper connected with any land business, and do not know of anybody else doing so.

With respect to that name making any impression on my mind, I will say that some time afterwards I saw that name in the San Francisco paper, as being one of the society women of San Francisco—a noted woman there—Jennie P. Blair, and that called that name to my attention.

I have no knowledge of the business done under the name of F. A. Hyde being a business in which Mr. Benson was a partner, and not being known in the concern. I hardly know Mr. Benson. I was never employed by him in any capacity.

"Q. What is the fact as to whether you were one of Hyde's and Benson's most trusted employees, exclusively engaged in the land department for the last three years of your service there? A. It is not true, sir. I was not."

I do not know anything about Benson's business. I saw him in Mr. Hyde's office once or twice, and the clerks said to me, "That is

Mr. Benson." I knew who he was, and that was all. He never gave me any directions in connection with any matter. I do not think he ever spoke to me. I do not know of any bogus powers of attorney being executed in favor of Hyde, and being used by him.

"Q. What, if any, knowledge have you of Hyde using any dummies in connection with any of his business? A. Well, if you call a man a dummy—the way I understand it, he takes up a piece of land for a consideration, then I know dummies have been used.

"Q. Is that all the information you have on the subject? A. That is it."

1332 I have no knowledge as to the changing of names; using parts of names on applications.

I know a man named McAvoy up by Bay Point. He is the only McAvoy I know. His name is Bill McAvoy. So far as I know, he never had anything to do with making applications for any school lands.

"Q. What, if any, knowledge have you about signing any of those names to papers and applications, which names they would get from an advertisement? A. I have none; I do not know of any such thing."

I have no knowledge of anybody writing those names to different papers, in order to make them correspond.

"Q. What, if any, information have you of Hyde undertaking to fix lines of forest reserves? A. Well, the reference to Lassen Peak, that is the only one I know anything about.

"Q. How do you know about that? A. I don't know whether it is a forest reserve or not; but I know that the map was cut down, the boundary line was reduced from one map I made to another one."

I made those two maps at the request of Mr. Hyde. I got information about those maps from the Land Office, or the Surveyor General's Office. Nobody else ever gave me any directions in respect to the making of those maps. I never saw any officers of the government in relation to what lines Mr. Hyde had included in that map, or anything of that sort.

The time that Mr. Dimond was down on the ranch, or some time afterwards, I do not remember just when, Mr. Hyde told me that

Mr. Dimond had gone to Washington for him. He did not tell me on what business he went.

1333 "Q. I will ask you what, if any, knowledge you have of Mr. Hyde employing anybody to come to Washington, or employing any of the clerks in any of the departments in Washington to give him information about forest reserves, or to help any of his cases through? A. I do not know about any clerks.

"Q. What other information have you with respect to it? A. He (Mr. Hyde) told me that he had a friend here in Washington, an old friend that he had known for years—but I do not know whether he was a clerk, or what he was.

"Q. What did he tell you about that clerk? A. I do not know whether he said he was a clerk.

"Q. Well, what did he tell you about his friend? A. He said his name was Mr. B. That is all that I can remember.

"Q. Is that all the knowledge you have on the subject? A. That is all, I think.

"Q. He told you Mr. Dimond was coming to Washington? A. He told me Mr. Dimond was coming to Washington for him.

"Q. Did he tell you for what purpose Mr. Dimond was coming to Washington? A. No; he did not.

"Q. Did he tell you what this friend of his did for him in Washington? A. No; he didn't. He told me once upon a time—  
1334 I don't remember what it was; it might have been years and years ago, but I don't remember his telling me that."

Mr. Hyde never told me for what purpose Mr. Dimond was coming to Washington. Mr. Hyde did not tell me, and I have no knowledge or any information on the subject of Mr. Hyde employing any clerks in the departments in Washington to get his cases through, or to get him any information about forest reserves.

I heard the name of Mr. Keigwin, in Mr. Hyde's office in San Francisco. I remember the clerks there speaking about Mr. Keigwin, and also about Britton and Gray—I heard those names—I am more familiar with them since I have heard them here in this case. That makes me remember that I heard them before. I had no information of Mr. Hyde having a lot of dummy applications ready for filing as soon as word was received from Washington that a forest reserve was to be created.

I do not know Mr. B. F. Allen. When I saw Mr. Allen here I know I thought I had seen that face before. That is all I know of him. I had never met him before, but I think I recognized that I had seen that face before.

Mr. Hyde told me the Lassen Peak map was made for Mr. Allen, and that is all. I have no knowledge of Mr. Hyde at any time receiving the cooperation of Mr. Allen in his business; and I never heard anything from any source with respect to the relations between Hyde and Allen. I have no information whatever about Mr. Allen being invited to Mr. Hyde's office, and entering it by a side door, and no information or knowledge about Mr. Allen's applying to Mr. Hyde for a loan.

I never was chief clerk in Mr. Hyde's office. I never  
1335 considered myself as a clerk. The only work I did there was when there were letters to write, as I had no typewriter. Miss Farwell would write a letter for me occasionally in connection with the ranch business. I never gave anybody the liberties of the office. I had no right to give anybody the liberties; and from the time I first entered Mr. Hyde's employ in 1879 down to the time I left in December, 1901, I never kept books in his office. Each foreman kept a book and a synopsis of those books was sent down to the San Francisco office and Miss Farwell kept the general ranch books there. The books which the foreman kept were kept on the ranch, and they showed how many men were employed, and the wages they got, and the expenses of the ranch, and I would go over these ranch books that were kept by the foreman, and would write down on a piece of paper the entries, and I would take it to my gen-

eral account and then I would take them down to Miss Farwell in the office.

On the ranch, I would buy and sell cattle, and other things, and that would be included in the books—if a foreman sold some hogs, or sold some wood, he would put it down sold so many cords of wood, or whatever he sold, and these accounts were forwarded to Mr. Hyde's office in San Francisco through me. I would send them down, or I would take them in.

I talked with Mr. Hyde about the general run of things down at the ranch, and would give the accounts to Miss Farwell. My salary, which was \$125 clean up until the time I left, was always paid me; and I never was to receive, and did not receive, any money or benefits other than my salary for anything I ever  
1336 did.

I never had any dealings with Mr. Benson in any shape or form; and I never got any money from Mr. Hyde except for the ranch purposes. The money for the ranch, and my salary, was all I ever got. I had no knowledge of any contract or agreement between Mr. Hyde and Mr. Benson with respect to selling any land. I have heard of a contract of September 12, 1898, between Mr. Hyde and Mr. Benson here at this trial. I do not remember seeing it. I have no knowledge of that contract. I never heard of it before I came here, and never saw it. I never heard of any other contract between Mr. Hyde and Mr. Benson, and cannot say that I ever heard of Mr. Hyde having any other contract with anybody about the sale of any lands.

After I went to Oregon in 1898, and after I came back, I never at any time had any knowledge that Mr. Hyde was negotiating with Mr. Benson to enter into a contract for the sale of Oregon lands. Aside from the ranch, I never had any interest with Mr. Hyde in any land matters at all; and I never had any interest whatever in the disposition of any lands acquired by applicants.

I had an interest in the ranch. Somewheres in 1883 I went back to Denmark for the trip and brought some money back with me which I had inherited there from my grandfather's estate; and I traveled around considerably for some months, and spent some \$1,500; and when I came back I had \$3,500, which I put into the ranch. I got about two legacies from Denmark. The first was the  
one I testified to this morning. I got about \$2,000 then, and  
1337 bought the ranch in Central California before I went to the

Hawaiian Islands. Then I made this trip to Denmark that I have just testified to, and on that occasion I got about \$5,000 and traveled around for several months and spent about \$1,500, and had about \$3,500 left when I returned. I had about \$500 more. That made about \$4,000. I put \$3,500 of that into the Hyde ranch with Mr. Hyde, and got a one-fifth interest in the ranch. Afterwards, the whole thing was turned into the Orris Timber Ranch Company, and I got my share of stock in that. The Orris Timber Land Company did not own the real estate itself. It only owned the stock; but it owned the real estate in the Hyde ranch and the Tulare ranch.

The incorporated company was called "The Orris Timber Land Company."

When I left Mr. Hyde on the first of December, 1901, I got \$4,000 from Mr. Hyde for my stock in the Orris Timber Land Company and my wife got a thousand dollars for a section of school land which she had had for several years, and I turned into Mr. Hyde my shares of stock in the Orris Timber Land Company.

Before I came to Washington in January, 1904, when I was summoned to testify here before the grand jury in this case, I had never been in the District of Columbia, and when I was here on that trip I did not see either Mr. Hyde or Mr. Benson, or Mr. Dimond, and had no business in relation to any land matter in these cases.

I had business with you, Mr. Donaldson, here on the occasion of my trip to Washington in January, 1904, when I was summoned here by the government to testify before the grand jury, which was then investigating this case, and before they had found the indictment. I consulted you professionally as my attorney.

I never, at any time, made any agreement with Mr. Hyde or Mr. Benson or Mr. Dimond, or any one of them, or two of them, with respect to obtaining any lands fraudulently from the States of Oregon and California and disposing of them afterwards to the United States. I never had any knowledge of the act of June 4, 1897.

When I went to Oregon on the trip in 1898, I did not have any knowledge as to where the lands were located or the descriptions of lands which I had received. There was nothing on the written descriptions which were given to me, except the township, the range, the meridian and the section; and I did not know whether those lands were or were not within forest reserves, and when I received those applications from my brother-in-law Lindale, and from Donovan and Fontaine, I did not have any knowledge about the lands that were referred to in the applications in those cases. All I knew was that they were taking up a section of land, and I did not know where the land was located; and I did not know whether they were in a forest reserve. Mr. Hyde never told me, either before I went to Oregon or while I was there, or after I had returned, for what purpose he wanted those Oregon lands; and I had no knowledge upon that subject from any source; and I had no knowledge as to what he arranged to do with the lands in California that were referred to in those applications that I had something to do with getting, or for what purpose he proposed to use them—I just got the application for him—that is all.

I first went on the ranch in 1879, and of course began to go to Mr. Hyde's office in San Francisco in the eighties, and from then I was frequently in the office for several reasons. To me, it was just the same the way Mr. Hyde carried on his business in 1897 and the way he was carrying it on in the eighties and the nineties down to 1897. I had no knowledge of any difference.

When Mr. Hyde had his office in Commercial Street, I know there was a door, but there was a desk in front of the door—there was

really no side door, unless you call going through the toilet the side door; but you could not use that for the purpose of getting into Mr. Hyde's office. Mr. Hyde had a room there and then there was a large main room for the clerks. It was a large room and there were big open folding doors between Mr. Hyde's room and the large room of the clerks. When I was there I always saw them open. They may have been closed at times, but I do not remember it.

In 1899 there commenced to be a kind of friction between Mr. Hyde and myself. We had dry years, and we had considerable stock, and the way he suggested and the way I suggested did not exactly hit. The feeling became strained from one year to another, and I did not go to the office any more than I had to. In fact, the last year I was on the ranch I saw him only twenty times during the whole year. I hardly ever went to the office. In addition, the ranch required my attention. We had, at that time, some-  
 1340 thing over 5,000 head of cattle, and a great many horses and farming lands, and I was on the jump all the time. From 1880 down to 1890 we did not have the Orristimba ranch. We had the Hyde ranch and maybe we had a couple of hundred, or two hundred and fifty head of horses, and from fifty to one hundred head of cattle.

In 1891 and 1892 we got hold of the Orestimba ranch, and we had put some cattle there and increased the stock. We bred cattle at that time, and in 1897 we bought the first bunch of steers from Arizona. I would generally go down to Arizona in the spring of the year and look around—go to Tucson and other places and find out where there were any cattle, and then I would make contracts for the cattle. I would go and look at the cattle and see the quality of them—see a bunch of them—I would not see them all. I would see how the range looked, and then I would contract for fall delivery on eleven hundred or twelve hundred head. I first began that business in 1897. We bought a trainload in 1897. A trainload of good-sized cattle, three years old, two years old, and yearlings; an equal division would be about twelve hundred head, and we bought a trainload in 1898 and a trainload in 1899 and a trainload in 1900. I bought two trainloads in 1901, and spent considerable time in Arizona. I bought the cattle in Tucson and some right down near the Mexican border, and some near a town called Benson, and on the Santa Rosa ranch. In 1899, I should say we had about 5,000 head of cattle, or steers, and maybe 150 head of horses. Prior to that time, we did not have anything like that number of stock, but we kept on increasing up to 1899, which was the first year  
 1341 when we were really stocked up, and we had the same number in 1900. We sold all every year when the cattle got fat, and when they did not get fat we would hold them there. Some dry years the cattle did not get fat, and we could not sell them, and the stock accumulated. There might have been over 5,000 head.

In 1901, the last year I was there, there was between 5,000 and 6,000 head of cattle. During the time I was employed on those ranches, I had general supervision of the men employed. In the



years 1899, 1900 and 1901, the men that we had employed had more than trebled.

I have heard Mr. Davis, the notary public from Oregon, testify. Prior to his testimony I had no knowledge whatever of what Mr. Davis' business had been with Mr. McCornack. I never knew anything about it. I do not know whether I ever went into detail with Mr. Hyde about the way I did business with Mr. McCornack up in Oregon—in reference to obtaining the applications, and so forth.

I never knew anybody by the name of Temyyon, and I have no knowledge of that name being used in Mr. Hyde's business at all, in any way. I have heard of the name of Appett, or something like that; when I went to school in Denmark, I had a schoolmate of that name, but I never heard of that name being used in Mr. Hyde's land business in any way.

I was in Oregon about thirty days and got back the last of August, 1898; and after I came back I had nothing whatever to do in communicating with Mr. Alexander in reference to the applications. I had no office business, and nothing of that kind.

1342 My recollection is that I made two copies of the Lassen Peak forest reserve. On the second copy I made, some of the property was left out—I think it was because it interfered with some ranch land up on the northern part of it, which belonged to Mr. C. W. Clarke. The same C. W. Clarke whose name has been mentioned here. I understood he had a ranch up there. Mr. Hyde told me to make that change, and leave that out of the map. I never myself signed any names of any persons to any papers in connection with any land business; and I never connived with anybody else to sign any fictitious name.

Some time in the summer of 1901—I do not remember the month—Mr. Dimond and somebody else came down to the Orristimba ranch with Mr. Hyde, and I took them up on the mountain. They were dehorning cattle at that time, and they came down to see it. I just spoke to the gentlemen—that is all. I never had any business relations with him. The next time I saw Mr. Dimond was last spring, in connection with this case; and I had never had any knowledge about what he was doing, except that Mr. Hyde told me that he had come to Washington.

#### Cross-examination.

By MR. BAKER:

As far as I know, Mr. Hyde's business was ranch business. That is where I had my business with him, and his card said "Agent for land claims," or something like that. I know I did my ranch business there at his office. There was other business done there. I saw them writing letters and papers, and I filled out some papers  
1343 for them; just what the scope of that business was, I do not know.

The first time I ever heard of a forest reserve was down at Tucson, Arizona.

"Q. And under what circumstances did you hear of it down there? A. With Colonel Zabriskie.



"Q. You wrote certain letters to the Department, did you not?  
A. I did."

The witness was thereupon shown Exhibits 28 and 29, being letters from J. H. Schneider to the Commissioner of the General Land Office, dated respectively July 30, 1902, and September 21, 1902, and heretofore introduced in evidence on behalf of the Government, and he was asked if his signature appears thereon and he answered: "Yes, sir." Thereupon the following occurred:

"Q. You say in this letter of July 30th, 1902, 'If such an agent should come here and consult with us,' referring to an agent of the Department of the Interior, 'we would be able to give him many details of a startling character, and you will hear the foundation for as big a case as the Department has had for some time.' What did you mean by that? A. Well, I meant I had a great many conversations with Colonel Zabriskie—if I can go into the details of it.

"Q. I want to know what you meant by this statement in this letter (Exhibit 28). A. That is the consummation of the  
1344 conversation I had with Colonel Zabriskie.

"Q. What did you mean by 'many details of a startling character'? A. Well, I don't remember those words. That was dictated by Colonel Zabriskie.

"Q. Well, what was it you wanted to tell the Departmental agent about? A. Well, about dummy applications.

"Q. And Elizabeth Dimond? A. Not particularly.

"Q. And Jennie P. Blair? A. Not particularly, but I remember those names.

"Q. What do you remember now about the dummy applications? A. Well, I remember, as I stated to Mr. Donaldson, those applications I got up in Oregon.

"Q. You did not get Elizabeth Dimond in Oregon? A. No, but I remember that name.

"Q. You did not get her at all yourself, did you? A. No, but I remember the name.

"Q. And when you refer to details of a startling character, you mean frauds, don't you? A. No. I mean just what I said, the dummy applications.

"Q. And that was Lyndall—Lyndall was a dummy application? A. Lyndall was a dummy application, the way I understand a dummy application.

1345 "Q. Did you have Colonel Zabriskie write a letter to the Department? A. I never had him write any letter myself. He wrote letters.

"Q. Did you see the letter that he wrote to the Department? A. I saw it here.

"Q. I mean, did you see it when he wrote it? A. No, sir.

"Q. You were on the stand a year ago in the Binger Hermann case? A. Yes, sir.

"Q. And you were shown these two letters that I have shown you here? A. Yes, sir.

"Q. Did you not refuse to answer? A. I did.

"Q. On the ground that it would tend to incriminate you? A. Yes, sir.

"Q. Why did you do that? A. By the advice of my counsel.

"Q. In what way do those two letters tend to incriminate you? A. Well, that is—my counsel told me so.

"Q. Told you that they would? A. Yes, sir.

"Q. When did you meet Mr. Holsinger? A. In the fall of 1902.

"Q. From the day you met Mr. Holsinger down to the 1346 time of the returning of this indictment, did or did not Mr. Hyde pay you any money? A. He never did, sir.

"Q. Who paid your expenses when you went to Mexico? A. I was in business all the time. I got \$20 from Mr. Hereford the second time I went to Mexico, and I went on business trips both times I went to Mexico.

"Q. How long did you stay in Mexico? A. I think I stayed at Cannanea 10 days the first time.

"Q. Under what name were you down there? A. Under the name of Joost H. Schneider at Cannanea. If I can go ahead I will tell you—

"Q. I will ask you if you did not go under the name of John P. Jones? A. I did, sir, at Alamos.

"Q. How long did you go under the name of John P. Jones? A. At the post-office I went under the name of John P. Jones, and I will tell you the reason, if you want to know.

"Q. I did not ask you the reason. A. All right; I will tell you if you want to know the reason for that.

The WITNESS (re-suming):

My wife's name was Rose M. Lyndall. I had no relatives by the name of Carpenter—I have no friend by that name. Mr. C. P. Lyndall was my brother-in-law.

1347 I made a statement to Mr. Holsinger, but he never read that statement over to me. Mr. Burns never read that statement over to me. Mr. Burns showed me the letters and a paper there, but I do not remember reading it. I know Knox Corbett. Burns and Knox Corbett were present at the same time when they handed me those letters and asked me if I read them. I cannot say whether it was the Holsinger report they showed me—they showed me a paper—I looked at it, but I did not read it. I do not remember that they asked me whether the statements in it were true. I could not have stated that the statements were true. I never mentioned Mr. Benson to them. I did not know Benson had anything to do with the lands. I saw him once or twice in Hyde's office. That is all. I had been in Mr. Hyde's employ from 1879 down to December 1st, 1901. I never was the head man around Mr. Hyde's office at any time. Mr. Hyde was the head man, and besides him there was Mr. Slack and the office boy. Those are the only men I knew of around there. I do not know what times Mr. Slack was there. I saw him there, and again I missed him. When he came and when he went away, I do not know.

I never told Mr. Holsinger that the business of the concern, referring to F. A. Hyde and John A. Benson, was real estate brokerage and the buying and selling of forest lieu lands scrip, because there

was no brokerage—no such business. I did not tell him that. So far as I know, Mr. Hyde was not engaged in the business of selling forest lieu land scrip—I do not know what scrip is, I cannot tell you today what it is.

To the extent of the ranch business, I think I was one of the trusted employees of Mr. Hyde, but I had nothing to do with the land business.

1348 "Q. Didn't you go up to Oregon and get him a whole lot of bogus titles? A. That will not have anything to do with the land business.

"Q. What will you call that? A. I call that going up for a trip. I did not take anybody up to Oregon with me. I was up there about four weeks, and saw a good deal of the country at the same time. Don't know how much land I got. I believe I took title to some of the lands in my own name, but I gave it all to Mr. Hyde, because that is what I was supposed to do. Mr. Hyde paid all my expenses and gave me the money. I paid the people from \$5 to \$20. I do not remember how much Mr. Hyde told me to pay these people, because his arrangement with me was different from what I followed out up there. He never told me not to pay over \$20 to any one of them, and try to get them for \$5. I got the money that I gave to the people from Mr. McCormack—that is eight or ten years ago, and I do not remember whether I got some of that money from Mr. Hyde.

I sent all the deeds to Mr. Hyde, and sent all of the applications to Mr. McCormack, except a few that I filled out myself. When I sent the deeds to Mr. Hyde, I cannot remember whether they were filled out or not.

In Oregon I took a very few people before a notary; I took some once or twice.

1349 "Q. You remember Alexander's testimony here, don't you? A. Yes, sir.

"Q. Was it true? A. So to speak, nearly all true; yes, sir."

There was no notary at the place where they were canning horse meat and I took those applications back to Don Alexander.

"Q. Now, can you name any of the dummies, you got for Mr. Hyde in San Francisco, or in California, other than the ones you have named? A. That is all I can mention. Those were Lyndall, Donovan and Frontaine.

I never told Mr. Holsinger that the firm of F. A. Hyde was not content with securing dummies, but it set about forging applications.

"Q. I will ask you whether or not you said anything like this: 'The firm of F. A. Hyde was quick to see a speculation in handling lieu land scrip and not content with legitimate business conceived the idea of securing the school lands by locating them under false names, or with what was known as dummies'. Did you say anything like that? A. I used the word 'dummies'."

I did not use the words "false names"; and I did not mention to Holsinger anything like, "The first work was done in the Sierra forest reserve in California", or anything like, "The methods employed were to forge some name to an application for the State school lands. A notary public, who was also a party to the fraud, for a cer-

tain consideration, certified that the persons appeared before  
1350 him and was known by him to be the identical person who signed the application"; nor anything like, "These applications were made in the State land offices and titles secured. Bogus powers of attorney were executed in the same manner in favor of F. A. Hyde and in due time the scrip was secured and placed on the market."

So far as I know, none of those things occurred. I know nothing about it. I never made that statement to Mr. Holsinger. That statement is padded. When Mr. Knox (Corbett) brought me that statement, I told him I never made those statements. I never made any such statements. I never told Mr. Burns that all of those statements were true except that part about my wife. I did say that my wife never signed any applications.

"Q. Then didn't you state further that 'for some time it was the practice to hire irresponsible persons to make applications for the State school lands, paying them \$10 each for the use of their names'? A. Oh, well, the only thing is that Oregon business. I got them for from \$5 to \$20."

I made that statement, and that is true. I did not say that Mr. Hyde was doing it. I did it.

I did not pay Mr. Lyndall a cent. Nor did I pay Mr. Donovan anything; he worked for me. I did not pay Mr. Frontaine anything.

"Q. Do you know whether Hyde paid Frontaine anything? A. I don't know.

"Q. Didn't you have a conversation with Mr. Frontaine  
1351 and Hyde as to how much he should receive. A. We did have, but he wanted more than I was willing to pay.

"Q. What was Hyde willing to pay? A. I don't know. I was not there.

I did not know anything about the barber, Stein. The only thing I said to Holsinger about dummy applications referred to the Oregon business.

"Q. Then did you further say this: 'However it became inconvenient to secure such persons and forgery was resorted to as a matter of convenience and economy. The method pursued was this: Advertisements were inserted in the San Francisco papers (Hyde's office was in San Francisco, Calif.) for stenographers and bookkeepers. As high salaries were promised, many answers were received, being applications for the advertised positions. The names signed to these letters of inquiry or applications were clipped from the letters, and these formed the basis for 'dummies'? A. No, sir."

I never made any statement like that. The first time I remember ever reading that Holsinger report was when a Mr. Cole handed it to me down in Camanche, Mexico.

"Q. Did you further say this: 'One case will illustrate their methods. James McAvoy, of Martinez, California, applied for one of the positions.' Did you know him? A. No, sir; I know a man named Billy McAvoy. He was a brakeman, a friend of mine and lived at Bay Point.

1352 "Q. Were you directed by Benson to use this particular name, changing, however, the given name from James to Calvin A. A. Benson had nothing whatever to do with the business with me, so that shows itself I never could have said so.

"Q. You say you never had anything to do with Benson? A. Never, sir."

I never traced the C. P. Carpenter signature. I never traced any signature. I never did, and my wife never did. She never had anything to do with these dummy applications. If any one says that my wife ever did such a thing, that is false. I never did get worried about it, and my wife never did ask me to come forward and tell all I knew about it and get rid of this trouble.

I was in business in Tucson, and I went to Cananea, Mexico, to try to get Mr. Parker interested in a cold storage plant down there, and was there about a week, or maybe ten days. I do not think I was there any longer.

"Q. Coming back to this report, Mr. Schneider, the report says, 'as this business grew it became apparent to Hyde and Benson that to keep the supply of scrip they must needs resort to other frauds, so they embarked in the business of making forest reserves, as far as possible, according to their own ideas and interests.' Did you say anything like that? A. As far as I am concerned, it was made of whole cloth. I never said so.

1353 "Q. And did you say anything like this: 'They used every possible influence to secure the creation of a forest reserve and also in many instances were instrumental in fixing the boundaries so that every acre of school land which was unlocated, which could possibly be included, was made a part of the reserve?' A. I never said so, and never told Mr. Holsinger that."

I did speak about the Lassen Peak forest reserve. Mr. Holsinger was there in Tucson for the best part of a year with Colonel Zabriskie, and he looked the whole thing up and came to these conclusions. I did not tell Mr. Holsinger that. I would not call Colonel Zabriskie my attorney.

"Q. Was not Colonel Zabriskie your attorney until you met Mr. Hereford? A. No, sir; I would not call him that.

"Q. When did you get Mr. Hereford as your attorney? A. I don't know—the last of 1902.

"Q. And who paid him, you or Mr. Hyde? A. I never paid him."

The Government paid my expenses to Washington in 1904. I came here as a Government witness. Mr. Hazard came along with me. We got off the train at the depot. I was a stranger here, and so was he. We went to the Montrose Hotel, and then we went to see our attorneys, Mr. Cole and Mr. Donaldson.

"Q. You went to see Mr. Hyde's attorney, didn't you? 1354 A. I didn't know whose attorney he was. I went with Mr. Hazard, that is all I know. I was a stranger in town.

"Q. You saw Mr. Donaldson, didn't you? A. Yes, sir. I saw Mr. Donaldson afterwards.

"Q. How did Mr. Hazard come to go along with you? A. I don't know."

I did not pay Mr. Hazard for coming to Washington with me. I could not tell you whether at that time he was employed by Mr. Hyde. Mr. Hereford, and not Mr. Hazard, was my counsel. Mr. Hazard came here and stayed with me until I went before the grand jury. We did not go back home together. I went back by myself.

Mr. Hyde did tell me that he had an old friend in Washington of many years' standing. I really do not remember how it was; but my impression was that he was mentioned under the name of B. I told that to Mr. Holsinger. That is one thing I did tell him; and I also told Mr. Holsinger about Mr. Dimond coming to Washington. I knew that, because Mr. Hyde had told me, and I told Mr. Holsinger about Mr. Allen, and about Mr. Pryor. I told him that Pryor had gotten a bull. Holsinger got it a Durham bull, and it was a Hereford bull—just as different as day and night. That shows what it was.

I think I told Holsinger that Appett was a dummy. I did not know Jennie P. Blair, but I got her application up in Oregon. I do not know who she was. I do not know who any of those people were. She may have been a waitress at the restaurant. There were lots of girls working there, and I got several of their names. 1355 I did not get Elizabeth Dimond's name.

My address in Oakland was 611 East 15th Street. That is my address, below Elizabeth Dimond's name. Elizabeth Dimond never lived with me.

I told Holsinger about M. J. Wright. I told him that once upon a time, I think it was in 1899, I filed some applications in the land office at Sacramento, and there was some question arose about them, and that I did not know what the trouble was, but anyhow, they could not be filed. Wright was Surveyor General, and I spoke to him about it, and I called up Mr. Hyde on the telephone and told him there was something wrong about the papers, and Mr. Hyde told me to get Wright to the telephone, and I did so, and then the old man said, "It is all right." And then I gave the papers to Mr. Wright. I do not know what became of them.

"Q. When Holsinger came down there, did you offer to tell everything you knew to the government? A. Just the same as I am telling you now here."

I do not know that I did offer to come to Washington and go before the grand jury, and I did not tell Burns and Corbett that I would come to Washington and go before the grand jury. I heard Knox Corbett's statement here. It is not true. Corbett stated that I began to ask him every day or two about how the case was going, and that, if I had money, I would come along, and all that. I never did. I was subpoenaed by the government, and I had no money to come, and I went to the Marshal and asked him for money, and he said, "I have no money," and Knox Corbett bought the ticket and gave it to me.

1356 "Q. And you went before the grand jury and refused to testify on the ground that it would tend to incriminate you?

A. According to the advice of my counsel, I did."

"Q. When you went before the grand jury and refused to answer

the questions, wherein did you think you were guilty? A. I am not a lawyer, or a legal mind, but I asked my attorney and he told me that.

\* \* \* \* \*

"Q. You went before the grand jury and refused to answer on the ground that it would tend to incriminate you? A. I did."

At this point, counsel for the government showed the witness Exhibit 194, being a map of the Lassen Peak forest reserve, with respect to which the witness testified:

My handwriting appears on this map. That is the map I made of Lassen Peak. At the time I made it I do not remember that I knew that the Lassen Peak was a proposed forest reserve. Lassen was an old Dane in California. Everybody knew about old Lassen. He was the man that made the trail through the country, and we all knew of him. I made the map to cover that territory, and that is why I called it "Lassen Peak." When I made it, I did not know what it was for. So far as I know, I never made any deeds of relinquishment to the United States for lands in a forest reserve, or gave any powers of attorney for lands that were in forest reserves.

I had no knowledge that the Oregon lands were in the 1357 Cascade forest reserve. All I knew was the slip that Mes-

Cornack gave me. I knew they were school lands, but I did not know what they were, and I did not care. Mr. Hyde never told me where they were. I did not know anything about State indemnity lands. My business was the ranch business, and I did not know anything about the land business.

I made the affidavits in the Carpenter cases, because I was right on the land. They wanted a witness who knew the land, and I made them, the same as any one would.

"Q. That was government land, was it not—United States land? A. I suppose it was.

"Q. Do you know what base was used to get the Carpenter land? A. I do not know anything about Carpenter, or anything about it. All I know is that I made an affidavit as to the character of that land."

So far as I know, the base land may have been some of the Oregon land, or it may have been Lyndall's lands. I do not know what became of it. I know more about lands now than I ever did before in my life.

I did not make out, in Mr. Hyde's office, any application to select lands under the act of June 4, 1897, that I knew of. I wrote on lots of papers. I did not take blanks, but blanks were handed to me, and they would say, "Here is a copy; will you write that in, Mr. Schneider;" and I wrote it in. I think I have filled in deeds, and I may have filled in applications, for government lands.

1358 At this point counsel for the Government, in the further cross examination of the defendant Schneider as a witness in his own behalf, exhibited to him a certain paper, being a forest-land selection application in the name of F. A. Hyde, dated June 8, 1898, and he testified that the portions of the paper written with pen and ink were in his own handwriting. The paper was

thereupon introduced in evidence, as Schneider Cross Exhibit No. 1, and is in the words and figures following, the portions which Schneider stated were in his own handwriting being here enclosed with brackets for identification:

SCHNEIDER CROSS-EXHIBIT No. 1.

*Perfected Claims.*

Act of Congress of June 4, 1897.

Forest Reserve Lieu Land Selection in the United States Land Office,  
(San Francisco) District, California.

To the Register and Receiver:

In accordance with the provisions of an Act of Congress approved June 4, 1897, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1898, and for other purposes," wherein it is provided as follows:

"That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tracts to the Government, and may select in  
1359 lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent."

"I, (F. A. Hyde) of (San Francisco) County, State of (California,) do hereby select and locate the following described tract of (unsurveyed) land, to wit: (The South half of South East quarter of Section Thirteen (13) East half of East half and South west quarter of South East quarter of Section Twenty-five (25) in Township Eighteen (18) South Range Twelve (12) East, Mount Diablo Meridian,) in lieu of (North East quarter, North half of South East quarter and South East quarter of South East quarter of Section Sixteen (16) Township three (3) North, Range Nine (9) West of San Bernadino Meridian,) which said last mentioned tract is included within the limits of the (San Gabriel) Forest Reservation in California, created by the President of the United States on the (20th) day of (December) 189 (2); and which said tract has been by me relinquished to the United States.

Witness my hand this (8th) day of (June), 189 (8).

(Signed)

F. A. HYDE.

*Post Office Address 630 Commercial St., S. F.*

There was also exhibited to the witness another paper purporting to be a non-mineral affidavit by one B. M. Newcomb, accompanying the said selection application and containing a description of the selected land and he testified that the description of the land and the other matter written with pen and ink in filling out the blanks were  
1360 in his own handwriting. The affidavit was thereupon introduced in evidence as Schneider Cross Exhibit No. 2, but need not be here inserted.



There was also exhibited to the witness another paper, dated July 8, 1898, purporting to be a deed of relinquishment from F. A. Hyde to the United States of certain lands, portions of which are referred to in the aforesaid selection application, and he testified that the blanks in said deed were filled out in his own handwriting.

The paper was thereupon introduced and read in evidence to the jury as Schneider's Cross Exhibit No. 3. The words and portions of said paper in Schneider's handwriting were as follows:

The word "San Gabriel" in the phrase "within the limits of the San Gabriel Forest Reservation in the State of California;" and also the name "F. A. Hyde;" also the word "San Francisco," and the word "California;" also the phrase "All of Section Sixteen (16) in Township Three (3) North, Range Nine (9) West of San Bernardino Meridian;" also the word "Los Angeles," the word "California," the figures "640" in the phrase "containing 640 acres," and the word and figures "8th" and "June, 1898."

Two other papers purporting to be deeds of relinquishment of lands to the United States, one by Therese Sutro, dated February 24, 1898, marked Schneider Cross Exhibit No. 4, and the other by Olga Sutro, dated February 15, 1898, marked Schneider Cross Exhibit No. 5, and shown to have emanated from the office of F. A. Hyde, were exhibited to the witness and he testified that the matter  
1361 in said papers written with pen and ink were in his own handwriting. The said papers were thereupon introduced in evidence.

The words and portions thereof in Schneider's handwriting were as follows:

In Cross Exhibit No. 4: The word "Sierra" in the phrase "included within the limits of the Sierra Forest Reservation in the State of California;" the name "Therese Sutro," the words "San Francisco" and "California;" also the phrase "All of Section Thirty-six (36) in Township Four (4) North of Range Twenty-one (21) East of Mount Diablo Meridian;" also the words "Toulumne" and "California" in the phrase "situated in the county of Toulumne," State of California;" also the figures "640" in the phrase "containing 640 acres," and the figures "24th" and "1898."

In Cross Exhibit No. 5: The word "Sierra" in the phrase "included within the limits of the Sierra Forest Reservation in the State of California," the name "Olga Sutro," the word "San Francisco City" and "California;" also the phrase "All of Section Sixteen in Township Nine South of Range Four East of San Bernardino Meridian;" also the words "San Diego" and "California" and the figures "640" in the phrase "situated in the County of San Diego State of California and containing 640 acres;" also the figures "15," the word "February," and the figures "1898."

There was also exhibited to the witness a certain other paper purporting to be a forest lien selection application signed by F. A. Hyde, dated June 8, 1898, and he testified that the writing in said paper with pen and ink was in his own handwriting. The paper was  
1362 thereupon introduced in evidence as Schneider Cross Exhibit No. 6.

The words and portions thereof in Schneider's handwriting were as follows:

The word "Visalia" in the phrase "Visalia District, California," the name "F. A. Hyde," the words "San Francisco" and "California," the phrase "the North half of North West quarter and South East quarter of South West quarter of Section Thirty (30) in Township Eighteen (18) South of Range Thirteen (13) East of Mount Diablo Meridian," and the phrase "The South half of South West quarter and South West quarter of South East quarter of Section Sixteen (16) in Township Three (3) North of Range Nine (9) West of San Bernardino Meridian," the word "San Gabriel" in the phrase "within the limits of the San Gabriel Forest Reservation in California," the figures "20th," the word "December," the figure "2" in the date "1892," the figure "8th," the word "June," the figure "8" in the date "1898" and the post office address "6330 Commercial St. S. F."

There was also exhibited to the witness a certain other paper purporting to be a deed of relinquishment of certain lands from F. A. Hyde to the United States, dated June 29, 1898, and he testified that the matters written with pen and ink in said paper were in his own handwriting. The said paper was thereupon introduced in evidence as Schneider Cross Exhibit No. 7.

The words and portions thereof in Schneider's handwriting were as follows:

1363 The word "Sierra" in the phrase "included within the limits of the Sierra Forest Reservation in the State of California"; the name "F. A. Hyde," the words "San Francisco" and "California"; also the phrase "The North half of North West quarter of Section Thirty-six (36) in Township Twelve (12) South Range Twenty-nine (29) East of Mount Diablo Meridian"; also the words "Fresno" and "Californina" and the figures "50" in the phrase "situated in the County of Fresno, State of California, and containing 50 acres."

There was also exhibited to the witness another paper purporting to be a deed of relinquishment of lands to the United States by C. W. Clarke and Philomen Clarke, dated October 28, 1898, and shown to have emanated from the office of the defendant Hyde, and he testified that the body of the said paper was in his handwriting, but not the date, October 28, 1898, that looks like Mr. Hyde's handwriting. The said paper was thereupon introduced in evidence as Schneider Cross Exhibit No. 8. The words and portions thereof in Schneider's handwriting were as follows:

The words "Cascade Range" and "Oregon" in the phrase "included within the limits of the Cascade Range Forest Reservation in the State of Oregon"; the words "We, C. W. Clarke and Philomen Clarke, his wife," "San Francisco City and," and "California," in the phrase "We, C. W. Clarke and Philomen Clarke his wife of San Francisco City and County, State of California," the phrase "North half of Section Sixteen (16) in Township Thirty-four (34) South of Range Six (6) East, and South West Quarter of Section Sixteen

1364 (16) in Township Thirty-five (35) South of Range Six (6) East, and South half of Section Thirty-six (36) in Township Thirty-seven (37) South of Range Five (5) East of Williamette Meridian," the words "Klamath" and "Oregon" and the figures "800" in the phrase "situated in the County of Klamath State of Oregon, and containing 200 acres."

I suppose I was in San Francisco when I wrote the words "Cascade Range" in that deed (the paper last referred to). I don't know where I was.

I did not explain to any of the people in Oregon who made these applications, for what purpose I was getting the land; only that they would take out 320 acres of school land. I may have told them that I was getting it for somebody in San Francisco. I was getting it for Mr. Hyde.

Mr. Hyde never made me a present of \$1,000 or \$5,000. He never promised to pay me anything, and he never promised to pay me anything after I wrote those letters to the Commissioner of the General Land Office.

"Q. Did you get a telegram to keep quiet, sent by Mr. Frontaine, not to talk to anybody? A. When I heard him say so, I kind of thought I had received such a telegram.

Mr. Hazard never promised to pay me any money. I do not know how Mr. Hazard came to come to Washington to see me unless it was by suggestion from Mr. Hereford, who was my counsel. I had not employed a lawyer in Washington before I came here in response to the subpoena of the government to appear before the grand jury in January, 1904. Mr. Hazard and I went to see 1365 Mr. Donaldson, and his firm were employed as my attorneys. I have never paid them anything.

My handwriting appears in Oregon application 8587, Jennie P. Blair; and also in Oregon application 8674, E. C. Douglass; and also in Oregon application 8664, D. O. Fulton.

My handwriting does not appear in any part of Exhibit 43, which is a deed from Jennie P. Blair to A. S. Baldwin. The last I saw of Jennie P. Blair, she was in Portland, Oregon.

I do not know whether she was in San Francisco in October, 1898.

Redirect examination.

By Mr. WORTHINGTON:

In my testimony, I spoke of a man by the name of Cole coming to see me in Mexico. He was not the Judge Cole of Cole & Donaldson. It was a Mr. W. K. Cole. He is a friend of mine of many years' standing. Mr. Cole saw me in Mexico in the fall of 1903. He showed me the so-called Holsinger report. I then read it for the first time. It was substantially the same thing as the Holsinger report which has been read in evidence in this case. I was down in the town of Cuernavaca, in Mexico, and Mr. Cole drove up to me and jumped out of his wagon and said, "I am glad to see you, Schneider. I have come down from San Francisco to get you to sign this paper, this affidavit, in connection with the Holsinger report." I told him I wanted to read it. I took it up and read it, and I told him I could

not sign that, because it was not true. Mr. W. K. Cole told me that he was acting for Mr. W. J. Burns, the special agent, who  
 1366 was investigating this case on behalf of the Land Office. I believed Mr. Cole was there at the instance of Mr. Burns. That is the first time that I had read that Holsinger report and knew what Mr. Holsinger had said in it.

I will explain why, when I went to Mexico, I went under the name of John P. Jones. It was on two grounds. In the first place, I had been considerably badgered in Tucson, and I had been advised by Mr. Hereford—we were afraid of the postmaster, Knox Corbett. I had missed letters, which people afterwards said they had written me and I had never gotten them; and on many occasions, letters have come to me which showed that they had been opened and read, and we were afraid to have anything to do with the postmaster, and for that reason Mr. Hereford told me to take another name, and I did so. These letters which came to me and appeared to be opened came through the post office, and I made an arrangement to receive my mail under the name of John P. Jones, so that the postmaster would not know that the letters were addressed to me. When I went to Mexico, Mrs. Schneider remained in Tucson. When I went to Mexico, on both occasions, I went under the name of Joost H. Schneider; but my wife wrote me letters, addressing me as John P. Jones. Nobody else did it. I was only in Mexico for about a month. At that time, too, I was bothered by Mr. Burns, Mr. Crawford, and I had some one watching one side of my house, and another one was on the other side. People would come after me, and life was not worth living.

"Q. Did you ever have a call from this Mr. Pugh? A. Yes, sir."

1367 Tucson is about one hundred miles from Cannanea, and it is about 350 miles from Tucson to Alamos. Both Cannanea and Alamos are in Mexico.

"Q. What took place when you came here in reference to this appearance of yours before the grand jury; did you come in contact with the government at all? A. I did.

"Q. Tell the jury all that took place about that.

"Mr. BAKER: I object.

"The COURT: That question is excluded."

At this point, counsel for the defendants offered to prove that Schneider was told by the District Attorney, or one of the District Attorney's representatives, just before he was taken in the grand jury room, that an indictment was about to be returned; that his name was in it, and that if he would come in and testify for the government that he would be left out of the indictment; but the court excluded the testimony so offered, to which ruling of the court the defendants and each of them then and there duly excepted.

From July 10, 1899, down to December 1, 1901, when I left Mr. Hyde's employ, I had no connection, directly or indirectly, with any of his land business. I had nothing to do with his land business at any time after 1899. These two letters which I wrote to the Department, and which bear my signature, and which have been introduced

in evidence, were dictated by Colonel Zabriskie. Colonel Zabriskie is dead. He must have died in 1904. With respect to Mr.

1368 Zabriskie's participation in this Holsinger conversation—

I met Mr. Holsinger at Mr. Zabriskie's residence in Tucson. As near as I can remember, we were there about three quarters of an hour, or so; we all talked and I suppose Mr. Zabriskie talked as much as I did. My recollection is that he participated to the same extent in the conversation as I did.

"By Mr. WORTHINGTON:

"Q. What, if anything, did Zabriskie tell you as to his object?

"The COURT: I do not think that is material.

"Mr. WORTHINGTON: Let me explain to your Honor what bearing it has.

"Mr. WORTHINGTON: We offer to prove that in conversations which the witness had with Zabriskie, prior to the interview with Holsinger, that Zabriskie had told the witness that he represented the Government in the prosecution of the so-called Star Route cases, and that he, Zabriskie, proposed, in this matter which he and the witness were in communication with the Government about, that in these alleged frauds in California and Oregon, that he, Zabriskie, would get an appointment under the Government to prosecute them as he had in the Star Route cases, and in that case he would see that the witness got a good thing out of it; and that this was one of the influences operating in the witness' mind at the time the statement was made to Holsinger, when the three of them were present.

"The COURT: When you say that that was one of the influences operating on his mind, do you mean that you offer to show 1369 that that induced him to make statements to Holsinger that were not true?

"Mr. WORTHINGTON: I do not know whether he will go that far or not; but he will say that Zabriskie interrupted the talk, and that a lot of information given to Holsinger was given by Zabriskie.

"The COURT: I have not excluded anything of that sort. You can show everything that Zabriskie said to Holsinger in his presence.

"Mr. WORTHINGTON: He will be unable to segregate what Zabriskie said and what he himself said.

"The COURT: You may have him state anything that Zabriskie said to Holsinger in his presence.

"I will exclude the offer, and an exception will be noted."

To which ruling of the Court the defendants and each of them duly excepted.

"Q. Mr. Schneider, you said something on yesterday to account for your letters being addressed by your wife in the name of John P. Jones, and you said something about your mail having been tampered with. Is there anything in addition to that line which you wish to say? — Well, there was letters which I afterwards heard people had written to me, which I never received.

"Q. Have you seen those letters from your wife anywhere else?

A. Yes; I saw some yesterday.

"Q. Where were they? A. Right on the desk. I recognized the seal on one of them.

1370 "Q. On what desk were they, and in whose possession? A. They were in the possession of the Government.

"Mr. WORTHINGTON: Mr. Baker, I ask you to produce those letters.

(The letters were produced.)

By Mr. WORTHINGTON:

"Q. Will you look at these envelopes, which the Government has produced, and tell me whether you recognize these as the letters you speak of which you saw in the District Attorney's possession (exhibiting the letters to the witness)? A. Yes, sir.

"Q. Where were you in November, 1903? A. I went from Tucson to Sonora, to Alamos, and then to — in the State of —.

"Q. In November? A. In November; yes, sir.

"Q. Can you tell us at what time in the month? A. It was at Fuerte first.

"Q. What time did you leave there? A. I couldn't tell you; I don't remember just when I left.

"Q. Can you state at what time in the month you went to Mexico? A. I went to Mexico the 1st of November, and I think I left Fuerte about the 1st of December.

"Q. You left Fuerte about the 1st of December? A. Yes.

1371 "Q. What did you do about getting letters addressed to you in the name of John P. Jones? A. I told my wife to address me as John P. Jones.

"Q. I mean what did you do at the post office in Mexico? A. I called for them there.

"Q. Were letters delivered to you under the name? A. I got some letters.

"Mr. WORTHINGTON: These letters—these produced by the District Attorney—are addressed to John P. Jones at Fuerte, Mexico, postmarked Tucson, Arizona, November 6, 1903, and November 6, 1903, and November 9, 1903."

"Mr. BAKER: Do you want to offer the envelopes in evidence?

"Mr. WORTHINGTON: No; I do not care to offer anything further, in connection with that transaction, at present.

"Mr. BAKER: We offer the envelopes in evidence, in connection with the examination of this witness.

"Mr. WORTHINGTON: I object to the introduction of them in evidence.

"The COURT: The statements purporting to be shown by the envelopes, made by Mr. Worthington, are not in evidence unless the envelopes themselves, in connection with that statement and verifying it, are before the jury.

"Mr. WORTHINGTON: Very well, let them go in for that purpose.

"The COURT: That is the only purpose of them. Are they identified by the witness as in his wife's handwriting and as sealed with her seal?

1372 "The WITNESS: Yes, sir; it is her handwriting.

"The COURT: They are addressed to him in the name of John P. Jones. The envelopes may be received, if it is so agreed for the purpose of showing the postmarks, etc. This, I suppose, to be in corroboration of the statement of the witness as to why he changed his name?

"Mr. BAKER: Yes; that is what we understand it is offered for, otherwise we would have objected to it."

Thereupon, the three envelopes in which the letters just referred to were contained, were introduced in evidence and are in the words and figures following, to wit:

Marked No. 2:

"Mr. J. P. Jones,  
Fuerte,  
Mexico."

Postmarked "Tucson, Ariz., Nov. 6, 1903, 5:30 p. m."

Marked No. 3:

"Mr. John P. Jones,  
Fuerta,  
Mexico."

Postmarked "Tucson, Ariz., Nov. 6, 1903, 2:30 p. m."  
Stamps on back illegible.

Marked No. 3:

"Mr. John P. Jones,  
Fuerta,  
Mexico."

1373 Postmarked "Tucson, Ariz., Nov. 9, 1903, 2:30 p. m."  
Stamps on back illegible.

D. W. BAKER, one of the counsel for the Government in this case, was thereupon called to the stand by counsel for the defendants.

Direct examination.

By Mr. WORTHINGTON:

"Q. I want to ask you how these letters and envelopes which have just been produced, came into your possession and from whom you got them? A. I never saw them until one day in court here. There was a reference made to them one day in court, and they were produced to me by Mr. Pugh.

Thereupon, counsel for the defendants called to the witness stand ARTHUR B. PUGH, one of the counsel for the government in this case.

By Mr. WORTHINGTON:

"Q. I will ask you how these letters purporting to be letters to John P. Jones came into your possession.

"Mr. BAKER: I object on the ground that it is absolutely immaterial and not involved in this case.

"Mr. WORTHINGTON: I think it is very important if we can confirm the testimony of Mr Schneider.

"Mr. BAKER: Do you offer it to corroborate Schneider's testimony?

"Mr. WORTHINGTON: Yes; I offer it for the purpose of corroborating his testimony that his mail was tampered with.

"The COURT: The government brought out the fact that he was going under an assumed name and he gave as a reason for it that he did not want his mail interfered with, and he said that it was interfered with. I think it is sufficiently in corroboration of that statement, considering the way the matter came in, to make this admissible, and the objection being withdrawn, you may proceed, if you wish, with the examination.

"By Mr. WORTHINGTON:

"Q. How did these letters come into your possession? A. They came into my possession in an envelope taken from Secretary Hitchcock's safe, some time after Mr. Burns withdrew from this case, or some time after he severed his government connection with it.

"Q. Have you any personal knowledge as to how they got into Secretary Hitchcock's safe? A. No sir; but I have this statement from Mr. Burns in regard to it.

"The COURT: That is not competent.

"Mr. WORTHINGTON: I do not object to it, your Honor.

"The COURT: You asked him for his personal knowledge. If you want to ask him a question based on hearsay I will rule upon it. This is not responsive, because you asked for personal knowledge.

"The WITNESS: I have no personal knowledge.

1375 "By Mr. WORTHINGTON:

"Q. I will ask you the question then whether Mr. Burns told you anything about where they came from.

"Mr. BAKER: I object.

"The COURT: I do not think that is admissible.

"Mr. WORTHINGTON: Of course, it is not admissible, if the government objects.

"Mr. Burns is not here now, is he?

"Mr. PUGH: No, sir.

"Mr. WORTHINGTON: Do you know where he is?

"Mr. BAKER: He is in San Francisco."

*Henry P. Dimond.*

Direct examination.

By Mr. VANDER VEER:

My name is Henry P. Dimond. I am one of the defendants in this case. I am forty-seven years of age, and reside in San Francisco. I am a man of family. I have a wife and children.

Prior to 1904, my business was that of an attorney at law. I have



been admitted to practice in all of the courts of California, the federal courts of the northern district of California, and the Supreme Court of the United States.

At present, I am the Secretary and General Manager of the Dried Fruit Association of California. I was elected to that position about the 1st of February this year (1908). I first met the defendant

Hyde in September, 1900. I was summering at a small resort  
1376 just out of San Francisco, and Mr. Hyde came over there for the night; and I was introduced to him by accident at that time by Mr. Howard Thompson, an official of the Bank of California. He casually introduced me. Afterwards, I met him occasionally. I first entered into business relations with him on the 1st of June, 1901. This business relationship was led up to by the social acquaintance we had formed in relation to yachts and yachting.

One day at lunch, he showed me designs of a yacht that he contemplated building. He was a member of the Cosmos Club, and so was I. He had never frequented it, but he came up there once, and on that day he casually told me that he had a number of cases in Washington that had been in the Land Office a long time, and that he had paid attorneys in Washington to take charge of those cases; but that they had dragged and that he would like to get a local attorney in San Francisco to take charge of the business. The conversation resulted in his coming to my office and making me an offer of \$1,800 for one year to attend to these cases; and I accepted it after a little consideration, and entered into a written contract with him regarding it. The contract was in duplicate. Each of us had a copy of it; but it was destroyed in the San Francisco fire. The contract was very brief. It was simply that I should take charge of these cases, and in consideration of the amount agreed upon for the one year, I should give them preference over my other business. It did not affect, in the slightest degree, my right to attend to my own business. That was understood. His cases were to have the preference over my other business.

1377 Prior to that time, I had had no experience in the land cases. My office was then located in the Mills Building; and shortly afterwards I moved my office over to Mr. Hyde's suite. When I originally entered into this agreement with Mr. Hyde, it was not intended that I should come to Washington. I expected to carry on the business by correspondence from my office; but he came back to me after the contract was signed and asked me if I would be willing to go to Washington for sixty or ninety days, because he told me that was the only way I could get the status of his cases, as a number of them were in the hands of other attorneys, and he did not even have the numbers of the cases; so he offered, in addition to my salary, that he would pay my expenses. I consented to go. Later, I think the following day, he came back again and suggested that, as he was occupying a floor in a building equally central to the one in which my offices were located, where rents were cheaper, that if I would move down to his building when I came back, we might find it to our mutual advantage. He said there was a young man who had offices in the back of his building who would

vacate them while I was away. That man was Mr. Samuels. He then said that I could save office rent while I was away, if I wanted to, by moving my things down to his office, and I could leave them there; and by the time I returned the office would be vacated. I finally did this and left the Mills Building for his office on the 8th of June, 1901; but part of my furniture was stored in the room above Mr. Hyde's office, and the flat-topped desk that I had in my outer office was placed in his general office, and when my 1378 roll-top desk arrived there it was found too large to go in any other door than the large door entering Mr. Hyde's room, and consequently that desk was put in that room.

Under those conditions, I agreed to come to Washington. Before I left, and while I was preparing to come to Washington, I sent on an application to practice before the Department of the Interior, and also read the departmental reports contained in some twenty odd volumes, I think, at that time; and I read a number of briefs of cases that had been appealed by Britton & Gray, and other attorneys in Mr. Hyde's behalf; and I studied the general trend of the decisions. I tried to familiarize myself with the general subject.

Between the time I went into his office and the time I left for Washington, I attended to my other business and arranged to have some probate matters taken care of during my absence. I likewise incorporated several companies, and went down through the counties south of San Francisco and looked after the passing of various ordinances with relation to the speed of automobiles. This occupied probably two weeks. I left for Washington the 19th of August, 1901, and arrived in Washington about the 25th of August. When I arrived, the first people I saw was the firm of Britton & Gray, composed of Mr. A. B. Browne and Mr. Alexander Britton. I had not known them before. I had letters of introduction to them from Mr. Hyde, and had personal letters of introduction to them from Mr. A. B. Bradford, of the Alaska Packers' Association. I presented those letters to Mr. Britton and Mr. Browne.

Mr. Hyde had also written Britton & Gray that I was 1379 coming to Washington for him. Britton & Gray had been

Mr. Hyde's attorneys for a number of years, and represented him in many cases in the Land Office. Then my correspondence began to come in from Mr. Hyde. I had brought some memoranda with me. The first cases I looked up were cases that Mr. Hyde had informed me he was not interested in, but he gave me the memoranda because he said he had nothing himself ready, that he would send me what he had by correspondence. These cases belonged to Miller & Loux, and I looked up those cases after my first visit to the Land Office.

I was invited by Mr. Britton, of Britton & Gray, to occupy Colonel Britton's room, which had been vacant since his death, at their office. He was the father of Alexander Britton; and I settled down in that office and remained there during my entire stay. I first went to the Land Office on Mr. Britton's invitation. He took me down and introduced me to the chief, or acting chief, of Division R, and I think on that day I met a Mr. Jones, whom I understood to be acting

chief, and Mr. Valk, of the forest lieu division—I think they called it.

During the succeeding weeks, I gave these cases as they came in by correspondence, all the attention required. Where an inquiry was made by my client, Mr. Hyde, I looked up the status of the cases where I could find it, but I found great difficulty in ascertaining what or where the cases were. Then I solicited more information, but I did not receive it for some time. I finally got a docket list, because I was unable to make head or tail of the cases. The Land Office seemed to be mixed up, and they could not give me the numbers, and I did not know exactly how to go to work to find 1380 them at that time. I received this docket list in the late November or first of December, 1901. There were about 250 to 275 cases on this docket list, and when I received this docket list the names of the applicants did not help me very much at the Land Office. I obtained a description of the selected lands, though it could be obtained from the books, and when I found a number of cases were involved in that docket, on the advice of my associates, I left their clerks obtain those numbers for me at the Land Office. I cannot state the dates of the applications for selections. They were all cases that had been in the Land Office either a number of years or for a period antedating my employment by Mr. Hyde. I had no knowledge or information in the world respecting the manner in which these applications for selections had been prepared or obtained. I did not even know of the existence of the cases until my docket arrived from Mr. Hyde's office.

I had nothing to do with the making of the applications. I had no knowledge whatever of any kind in respect to the manner in which the land had been obtained from the State, and there was nothing whatever on the face of the papers which would indicate to me the manner in which the applications had been obtained, or the manner in which the land had been obtained from the States of Oregon or California.

I conducted considerable correspondence with Mr. Hyde in relation to the cases, during my entire stay in Washington. I returned to California in the latter part of June, 1902. While I was 1381 in Washington, I received a letter from John A. Benson, on September 21, 1901, in due course of mail.

The defendant Dimond was here shown Exhibit No. 418, and identified that as a letter dated September 21, 1901, received by him from the defendant John A. Benson. In this letter, Benson requested the witness to go to New York and endeavor to obtain from Henry Seligman a contract to sell to Benson certain of the Aztec Land & Cattle Company's lands in New Mexico. (See the said letter heretofore copied in full in this bill of exceptions.)

The WITNESS (resuming): Prior to that time, I had not been acquainted with Mr. Benson—I had been casually introduced to him. I do not recollect having met him but the once, and then I had had an interview with him not to exceed three or four minutes—merely a casual introduction. I had had no business relations with him whatever when I came to Washington. When I received this letter

from Mr. Benson, I answered it. I complied with the request in this letter to see Mr. Seligman in New York, in regard to this Aztec land business, and was connected with the Aztec contract until it was consummated, which was approximately at the end of the year 1902.

The witness was then shown the letter, Exhibit 77, dated April 11, 1902, to which the defendant Benson referred in his testimony, and he said he had received the same in due course of mail at Washington, D. C. I presume I answered the letter, but have no distinct recollection. I probably looked up the selections mentioned in the letter. I was aware that Mr. Benson was interested in some of the lien land involved in these selections.

1382 I arrived in San Francisco on my return from my first trip to Washington early in July, 1902. I brought my docket and papers back with me. My wife then developed typhoid fever, and was in the hospital for six or eight weeks after my return.

Afterwards, I found these rooms 7 and 8 in Mr. Hyde's suite, and I moved into these offices. I had my name and my profession "Henry P. Dimond, Attorney-at-Law", on the door. As soon as I returned to the office of Mr. Hyde, Herbert Clarke, who has testified here and who had clerical charge of the San Francisco end of the matter, came into my office and I gradually turned the routine work of these matters over to him. I had filed my appearance in all of these cases. The numbers had been looked up for me, and Britton & Gray's clerks had prepared and filed my appearances, most of them dating at the end of December, from the 28th to the 30th of December, 1901. Those appearances gave Britton & Gray's office as my address in Washington, and as a consequence all of the notices from the Land Office, notices of actions or calls for anything that was required, were received by Britton & Gray. These were first looked over by them to see whether any of the cases were cases that had been left with them. In a number of these cases that were on file they had personally appeared, and in others I had appeared with them; and they looked them over first to see whether they were directly interested and whether they had the papers. If not, they forwarded them out to San Francisco.

Herbert Clarke took charge of these matters, and during 1383 my wife's illness I only came to the office when it was absolutely necessary. All of the mail from Washington was opened by Herbert Clarke. Whenever it was necessary, I directed the responses to these different letters, and did so during that summer; but it was left to Herbert Clarke where he could do it, and where he could not do it it was necessarily left for me until I came to the office. During that summer I attended to other professional business and received my clients in my office there.

I next left San Francisco for the East some time in October, 1902. I first went to New York and then to Washington, and I was in Washington three days, and saw Britton & Gray while I was here. I did not go to the Land Office while I was here on that occasion. I came East in connection with the purchase of the Aztec Company's land. The purchase of that land had been concluded, and I saw Seligman & Seligman, and other people, in New York in connec-

tion with it. I returned to California about the first of November. After my return, the correspondence with the Land Office was necessarily continued, and it had been continued while I was away on this second visit. I had left it in charge of Herbert Clarke. I did not know Mr. Keigwin, who has been referred to in this case.

The first time that I learned that a suspension order had been issued by the Land Commissioner respecting these selections of Mr. Hyde was early in December, just after my return from a business trip in the country. I learned it first from Mr. Hyde himself.

I then left California in December 21 or 22, 1902, and arrived in Washington the last day of December, 1902. I came to 1384 Washington at the request of Mr. Hyde to confer with Britton & Gray relative to this suspension order. On this trip East, I stopped by Tucson, Arizona, for the purpose of having an interview with the defendant J. H. Schneider. I did that at the request of my client, Mr. Hyde. I saw Mr. Schneider. I did not know, and had not met, him prior to that time, except on one occasion, and that was in the spring of 1901, when I attended a round-up of cattle on Mr. Hyde's ranch. Mr. Schneider was the foreman of the ranch, and my recollection is that I was introduced to him before the round-up took place. There was a party of three of us, including Mr. Hyde, and I was on the ranch about a day. That was the only time I had ever met Mr. Schneider, and I had never had any communication with him whatever. I did not know him at all.

My recollection is that I reported to Mr. Hyde the result of my interview with Schneider. I then left Tucson and went on to Chicago, and remained there for two or three days, and then came to Washington. I did not see Mr. Schneider again after that interview in Tucson, Arizona, until I met him in May, 1907, right outside of this court room. That was when this case was called for trial last year. I have never had any communication of any kind with Mr. Schneider, written or otherwise, nor addressed him directly or indirectly.

I arrived in Washington late in the evening of the last day of December, 1902. The following day being New Year's, and a holiday, neither Mr. Browne nor Mr. Britton was at their office. I communicated with Mr. Browne by telephone, took New 1385 Year's dinner with him, and had a consultation with him upon the subject of the suspension order at his home that evening, after dinner. I simply learned that the fact of the suspension order was generally known. I did not learn anything additional from Mr. Browne that evening. Subsequently the matter was, as I understood it, set forth in my correspondence with Mr. Hyde, and Mr. Browne corresponded with him, and we conferred on the subject. I stated to Mr. Hyde the result of the information I received here. I did not myself in any way see anyone connected with the Land Office.

I wrote Mr. Hyde this letter, dated January 22, 1903—referring to Exhibit 387—and Mr. A. B. Browne wrote Mr. Hyde a letter on January 10, 1903, a copy of which is exhibited to the witness at

this point. This is the letter which Mr. Browne wrote Mr. Hyde, and my recollection is he showed it to me at the time.

The letter referred to is Government Exhibit No. 105, and is in the words and figures following, to wit:

(U. S. EXHIBIT No. 105.)

(EXHIBIT DIMOND No. 1.)

JANUARY 10, 1903.

F. A. Hyde, Esq., 415 Montgomery Street, San Francisco, Cal.

DEAR SIR: Mr. Dimond has consulted with me concerning 1386 the suspension order, and I have given the matter long and thoughtful consideration. I feel, of course, absolutely confident that the charge that you have wrongfully participated in any effort to impose mythical applicants on the State for the purchase of school lands, is without foundation and yet even the unsupported assertion, made by your former employé, that *he* participated in such transactions, makes the situation an ugly one, from the standpoint of both yourself and the numerous parties who have made the selections in your name, but really for their benefit. Mr. Dimond has read me his letter, which he has drafted after our consultation and following the general results thereof. I can see nothing to add thereto except, perhaps, to emphasize one or two points.

(1) In making these forest reserve lien locations or exchanges the Government is of course acting as a purchaser of the surrendered land and is paying therefor with the selected land on basis of equal acreage. The Government properly required a proper deed of conveyance with proper abstract of title and certificate showing payment of taxes, non-existence of liens, etc. The transaction is hence not essentially different from that between individuals affecting an exchange of their lands. When, therefore, the Government is put on notice from any source of defect in the title offered to be relinquished to it in making the proposed exchange, it must, like the individual, be charged with knowledge of all facts which it might ascertain by reasonable inquiry after receiving such notice of apparently defective title.

1387 If the charge be true that the grantees from the State were myths and not persons in being, no title would go from the State unto its patents because there would be no grantee to receive it, and equally, of course, there would be no person in existence who could make a deed of such title, based upon such patent, to you or to anyone else. This question arose and was directly ruled upon by the Supreme Court, in *United States against Moffatt*, 112 U. S. p. 24. There the charge as made and proven was that the alleged preceptors, to whom the patents were issued, never existed in fact, and the Supreme Court applied the well-established rule of law that there could be no such thing as a conveyance of land to a mythical person, because there was no grantee to take the title, and that there

could be no such thing as a *bona fide* purchase from such a mythical grantee, because it would be impossible to take a conveyance from one who was not in existence.

Hence, as you will see, under this state of facts, the Government in suspending the selections made in your name, whilst doing a great injury to many third persons who are the real holders of the title, is yet, from its standpoint, taking only a prudent course to avoid the possibility of its hereafter finding that the title purported to be surrendered to it in the forest reserve is, in fact, no title at all, because, having no bottom in a valid patent from the State to a person in actual existence, or any conveyance from a person in actual existence, of such title to you or to anyone else in the chain of title transferring the land to the Government.

1388 (2) This wholesale suspension, of course, puts the Government in a safe position until the proof is made satisfactory to the Land Department that the Government is receiving a good title. It hence results that, in all fairness, you should, as speedily as possible, procure for the benefit of the parties who hold the real title under these selections and for whose benefit they were made, the sworn statements of the State's purchasers and grantees, which will establish their indentity and existence; their purchase in good faith from the State under the laws thereof, and their absolute conveyance of the land, after issue of patent to them, for a valuable consideration. The existence and identity of such persons should also be certified by the written statements of prominent individuals in the community, such as judges or county officers, as corroborative of their existence and identity.

This proof should be filed on behalf of the present parties in real interest under the selections, in order that the suspensions may be removed as to such cases as fast as such satisfactory proof is furnished. In this way only, in my view, can the order of suspension be overcome by such gradual process of elimination through supplying the suggested proof of identity and *bona fide* in each case.

From what Mr. Dimond tells me, I do not doubt that the whole matter rests upon an attempt to blackmail you by a discharged employé, but, as I have suggested above, whatever statement he has made along this line, which is now in the hands of the Land Department, is sufficient to properly stay action in respect of selections or exchanges sought to be made in your name, for otherwise the Government would be without remedy and could not deny the right of the State to secure proper judicial decree annulling such fraudulent patent, if, in point of fact, any such exist.

Yours very truly,

(Signed)

A. B. BROWNE.

The WITNESS (resuming): I cannot say how frequently I wrote to Mr. Hyde during my stay here in January, 1903, but as often as occasion required—I should think half a dozen times—I had other business that I was attending to. My course in relation to this suspension order, and my advice to Mr. Hyde was taken after consultation with Mr. Browne, and in accordance therewith.

I returned to San Francisco, in February, 1903, and returned to my office and reported to Mr. Hyde the result of my investigation here.

My financial relations with Mr. Hyde terminated on the first of March, 1903. I severed my entire connection immediately thereafter.

When I returned to San Francisco in February, I told Mr. Hyde that he must act in accordance with the advice of myself and Mr. Browne, with relation to obtaining evidence of the existence of the selectors, and of the manner in which their several selections had been made, and their titles transferred. That was one of the causes of our severing our connection. He promised to do so, and he did secure a number of affidavits as to the identity of the people. The severance occurred about March 1st, 1903. I left Mr. Hyde's office shortly after the middle of March, 1903, as nearly as I can recollect. My employment with him ended the first of March, but I found considerable difficulty in obtaining offices in a satisfactory location at the price I was willing to pay, and the offices I was finally promised were not vacated as soon as was anticipated; but I obtained possession of those offices and moved into them.

Under the agreement with Mr. Hyde, he paid me eighteen hundred dollars for one year. After my return from the East the first time, in 1902, I asked for an increase, in view of the fact that I had remained East far beyond the time that I had anticipated, and had consequently suffered in my personal business, and my salary was made at the rate of \$3,000 per year—\$250 per month.

During my stay in Washington, at the office of Britton & Gray, after the receipt of my docket from Mr. Hyde's office, I had this rubber stamp made, containing my stamped signature, which has been testified here, so that those who were helping me in Washington make up that docket could stamp the entry of my appearance in the Land Office; and it was used by them in that way, and by myself. I used it frequently when I was in a hurry. I took it with me when I returned to San Francisco, and kept it in the office. At the time of my wife's illness I turned it over to Herbert Clarke, with instructions to use it in the same way. He retained it until after I severed my connection with Mr. Hyde. When I left the office in March, 1903, I did not take the stamp with me, because it was in Clarke's desk, and I overlooked it. Later on, I sent for it, and it was delivered to me at my new office.

1391 At this point, the witness was shown the anonymous letters in evidence, some addressed to the witness and some to the officers of the Government.

The witness denied having written any of the anonymous letters and denied having any knowledge whatever as to who wrote them or how they came to be written or sent, or anything else in connection with the writing and sending of them.

The WITNESS (resuming): While I was in the office of Mr. Hyde, as I have testified, I had nothing to do with any of his land business outside of these cases which were on the docket that was sent me. I



had absolutely no knowledge of the manner in which he obtained his applications on which the selections were made. All the cases in which I was interested for him in Washington were cases upon which selections had been made, and I knew nothing about the manner in which they had been obtained, and had no notice of it.

I have heard Mr. Valk testify here, and remember his testimony generally. I was introduced to Mr. Valk on my first visit to the Land Office by Mr. Alexander Britton, with whom I went there. That was within a week or two after my arrival here in Washington in September or August, 1901. Mr. Valk happened to be in the room when Mr. Britton took me in and introduced me to Mr. Jones, who was acting chief of the division; and I was then introduced to Mr. Valk. During my visits to the Land Office he sometimes came in with the papers in selections that I asked for, just as other clerks

1392 did, and treated me with the same uniform courtesy that I received from all of the other clerks. During the early part of my stay, and before I was acquainted with Washington, I was at the Land Office one day at the noon hour, and it was the first time I had been there at that hour; and I was informed by whoever was in the office, the Chief's office, that no one was allowed there, no attorneys were allowed there during that noon hour. As I had not quite finished the selections that I was looking over and noting, I asked them if they would leave those selections upon the table in the office—a table provided for the examination of such papers—and I went out of the Land Office thinking I would get lunch somewhere in the neighborhood. On the steps I happened to see Mr. Valk, and asked him if he knew any place in the neighborhood that one could get lunch, as I was a stranger. He recommended some place, and I asked him if he would step over and have a bite of lunch, which he did; and then I went back to the Land Office and finished my work. I never had any other acquaintance with Mr. Valk than casually meeting him. I would sometimes see him on F Street, as I have seen other clerks, walking to and from that portion of the city.

During this interview at luncheon nothing whatever was said about business matters of any kind. It was in a crowded restaurant, and my recollection at this time is that Mr. Valk asked me principally about California, its climate, and a desultory conversation of that character. During the time I was here in Washington in connection with these cases, I never, at any time, in any manner, shape or form, talked to any clerk or official to expedite any of these 1393 cases. I simply did what I understood to be the custom, and saw was the custom of other attorneys. Frequently there would be one or two attorneys, either from other cities or from this city, at the table in the Chief's office in division R calling for cases. I would go for such cases as I wanted to look at, and, if they were obtainable, would see the notations on the docket.

I did not meet Mr. Valk during my visit in Washington in January, 1903. I did not see Mr. Valk during my visit to Washington in October, 1902. At that time I saw no one connected with the Land Office. My visit here on that trip was solely to see Britton & Gray in relation to the abstract of title in connection with the Aztec

matter. They were handling it with the Secretary of the Interior, and the object of my whole trip, in fact, was in connection with that business.

Referring to Mr. Valk's testimony, in which he stated that at one time he met me and that I made some sort of a motion, exhibiting a card that he thought was a card of Benson's, I wish to say that Mr. Valk is mistaken. That is not true. I never had a card of Benson's in my possession. I am sure that Mr. Benson's name never came up between Mr. Valk and myself. At that time, I did not know that Mr. Benson was acquainted with Mr. Valk.

While I was in Washington on my first visit, I had some forest lieu land selections placed in my hands by the North Tonawanda Lumber Company, and had various other business while I was here.

I practiced before the Navy Department in a number of  
1394 matters for Mr. Ellis, of San Francisco, who was connected with the Equitable Life Insurance Company, and I prosecuted business for them before that Department, and received correspondence from numerous parties who were interested, or claimed to be interested, in these selections which I had on my docket, and I communicated with them in response to their letters wherever it was required, and my understanding of the business was from the commencement that Mr. Hyde, save in the selections that upon my docket were marked as his special property, was not the party in interest; that he had sold the lieu to various individuals all over the United States; and that the reason he wanted me to come on and attend to these selections was because, under his sale contract, the money in payment for this lieu was deposited in various banks; and that until he got the approvals for these people whom he called his clients, and to whom he had sold this lieu, he could not collect this money. And many of these people wrote to me in regard to their selections, asking me what prospect there was of their being approved, or sending me some paper that indicated that the Government had made a requirement for an affidavit, or something of that sort; and I responded to these various letters.

By Mr. WORTHINGTON:

I was never in Washington before I came here in August, 1901. Prior to the time I entered Mr. Hyde's employ in June, 1901, I had no knowledge whatever of his land business.

With respect to my rooms in Mr. Hyde's office, when I  
1395 returned to San Francisco from my first visit to Washington, the janitor's hall room, or closet, was cut out, and a large open way made between Mr. Hyde's office, and the room occupied by Herbert Clarke and myself. Before that was done there was no means of getting from rooms 7 and 8 to the other offices occupied by Mr. Hyde and his force, except by going through the hall, and the only object of making that opening, so far as I know, was to make the different rooms of Mr. Hyde's office communicate with each other, and it was made more particularly, I think, for Herbert Clarke's convenience, and Mr. Hyde himself, because he had occasion to come to confer with Mr. Clarke, and he, of course, used to

confer with me frequently, when he did not wish to go out through the hallway. I know that there was a private wire that connected Mr. Hyde's office with Mr. Benson's office. That wire did not extend into our rooms, 7 and 8. The 'phone in my room, when I came there, was a city 'phone, and a little interior office 'phone and set that they had there.

When I spoke of meeting Mr. Hyde at the Cosmos Club, I meant the Cosmos Club in San Francisco, not here. At the time of the San Francisco fire, I had charge of the legal department of J. K. Armsby Company, and all of my papers and things were in the Armsby & Company's vault. They were all destroyed in the fire following the earthquake. The correspondence which I had had with Mr. Hyde when I was in Washington was all supposed to be numbered. This was so with respect to my letters to him, and his to me; and I had no correspondence with him while I was here, except this numbered correspondence. When I returned to San

Francisco, I saw that this correspondence was in charge of 1396 Mr. Herbert Clarke. It was back and forth, and whenever a clerk had any occasion to use it, it was in my office, and if anyone else had any occasion to use it, it was taken out. I had no secret correspondence with Mr. Hyde whatever. Up to the time of the finding of this indictment, I had no knowledge or information of any kind of an agreement between Mr. Benson and Mr. Harlan, or between Mr. Benson and Mr. Valk, save what I read in the newspapers after Mr. Benson's arrest. I was never in Mr. Benson's employ in any way, except in connection with the Aztec matter. Mr. Benson paid my expenses in connection with the Aztec matter.

When I first took up the Aztec matter, I drew on Mr. Benson for \$50, for expenses on my first trip to New York, and thereafter I drew on him whenever I required money in that matter. All my expenses in connection with the Aztec were paid by Mr. Benson. My only knowledge in reference to a part of my salary and expenses while in Washington being charged by Mr. Hyde to Mr. Benson is from a statement made by Mr. Hyde to Mr. Browne in my presence in Washington in October, 1901, at Mr. Browne's office. It was at the time of the Lipton International Yacht Races of 1901, the only visit that Mr. Hyde made to Washington while I was here, and he was here only a few hours. It was at that time that it was arranged that I should remain in Washington, and the arrangement was made at Mr. Browne's suggestion; and afterwards, we three sitting there in my office, Mr. Hyde remarked that he was going to charge up a part of my expenses to Benson because Benson was interested in

some of the lieu lands. That was the first time I ever knew 1397 that Benson was interested in any way. I never had anything to do with the getting of lands from the State while I was connected with Mr. Hyde's office; and I never had any knowledge whatever about the manner in which he was or ever had theretofore been engaged in obtaining lands from the States of California or Oregon.

I returned to California from Washington in July, 1902, and from that time on during 1902 I knew nothing whatever about what

was going on in Mr. Hyde's office or in Mr. Benson's office in reference to making applications for State lands in forest reserves, or proposed forest reserves. Nothing was shown as to these matters on the docket sheets that were sent from Mr. Hyde's office to me after I came to Washington the first time. The only thing shown was the person in whose name the selection was made; and then I had to get the number of the selection, and in that way find the case and the status of it in the Land Office.

I never met Mr. Keigwin in my life, until I saw him on the stand here as a witness. I attended the round-up of cattle at the Hyde ranch in the spring of 1901. That was prior to my employment by him. He had asked me to meet him at the Merchants' Club, a downtown club, to show me some yacht plans that he had received from a man who was designing some yachts for him, and my recollection is that it was Friday, and he casually mentioned that he was going down to the ranch to see this round-up, and asked me if I would like to go along.

When the hearing took place before the Commissioner in San Francisco in this case, I voluntarily produced to the Govern-  
1398 ment all of my correspondence with Mr. Hyde or with Mr.

Browne. I gave up everything that I had or could find in my office. I do not recall the date of the letter, but I know that I gave to the government a letter which was sent by me to Mr. Hyde, giving Mr. Hyde the views of myself and Mr. Browne as to what Mr. Hyde must do to be relieved of the suspension order, or to meet the suspension order. In the letter of January 10, 1903, from Mr. Browne to Mr. Hyde, which has been read in evidence, Mr. Browne says, "Mr. Dimond has consulted me concerning the suspension order, and I have given the matter long and thoughtful consideration." Mr. Browne and I had several conferences about the matter.

In Mr. Hyde's letter to me, put in evidence in this case, dated January 15, 1903, he said, "I have your letter of the 8th"—and further on he says, "It is a physical impossibility for me to comply with your suggestion. I do not know, nor have I any means of tracing, the most of the people who purchased the sixteenth and thirty-sixth sections in California and Oregon," and so forth. I had a copy of the letter which I wrote Mr. Hyde on January 8th, and which is referred to in his letter to me of January 15th. It was among the correspondence which I turned over to the officers of the Government, and they kept it; and I have not seen it since. The substance of that letter from me to Mr. Hyde, dated January 8th, was that he should go out, or send out, and find all of the people who had taken up lands, and have them properly identified before a judge of the United States court, in order that he might show that they were in existence, and that those identification papers

1399 should be sent immediately to the United States Land Office; and while he might not be able to find all of them, he could find so large a number that, by a process of elimination, he could meet the suspension order which, we understood at that time, only involved the selections of F. A. Hyde and F. A. Hyde & Company.

At the time I heard of the suspension order, I did not know any-

thing about its embracing cases in which Mr. Hyde's name appeared, unless it appeared at a selector. If the selection was made in his name, or in the name of F. A. Hyde & Company, my understanding was that that was included. I did not know anything about whether that suspension order referred only to certain forest reserves, and not to others.

Referring to that paragraph in my letter to Mr. Hyde of January 22, 1903, which reads, "My information is not obtained from people in authority, for while Hermann remains and in the present state of affairs it would be most unwise to show our hand to people in authority. But I have been able to learn to a certain extent what people in authority think." I had gotten this information from Mr. Browne, of the firm of Britton & Gray. I meant by the expression in the letter, "in the way I suggest," finding the applicants and having them properly identified. I obtained from Mr. Browne, the day I wrote, the information which I put in that letter to the effect that, "every selection in your or the Company's name has been listed, with a full statement of the names of all the grantors and grantees,

from the Government back to the Government." Mr. Browne 1400 had given me the whole statement which was the basis of that letter—I had gotten from Mr. Browne all of the information which I wrote Mr. Hyde in that letter.

Mr. Browne came to my office and gave me the substance of that letter. We had become very intimate friends during my stay here, and he said to me, "Diamond, I do not want you to ask me the source of my information, or anything about it; but I assure you that it can be relied upon."

By writing that letter to Mr. Hyde, I meant to convey to him the gravity of the situation; the fact that he had always appeared to be careless in his details of business, and I was following exactly the line that Mr. Browne and I had agreed upon. My letter to Mr. Hyde was written after I received the one from him which has been in evidence, in which he spoke of having these applications made by his janitor and his bootblack, and so on.

Mr. Browne informed me that if the suspension order was not met at once, and properly, it would likely result in a prosecution of Mr. Hyde. Within an hour or two after I got all of this information from Mr. Browne, I wrote this letter to Mr. Hyde.

I had absolutely no interest in any of the selection cases in the Land Office here in Washington, except in my employment by Mr. Hyde.

I never saw the contract between Hyde and Benson of September 12, 1898, until it was introduced in evidence at the hearing before Commissioner Heacock at San Francisco.

I have read the first count of this indictment, and I never 1401 at any time had any agreement of any kind with Mr. Hyde such as is outlined in this indictment. I never had any agreement directly or indirectly, or understanding, express or implied, with Mr. Hyde, that I would assist him in getting any lands from the State of California or Oregon, or in any other way, or

assist him in getting selection cases through the Land Office where the land had been obtained from the State by fraud or wrong act; and I did not know of any fraud, or the manner in which they had been obtained; and I never, at any time, had any such understanding, express or implied, with Mr. Benson; and I have never had any business with Mr. Benson except as I have here testified. I never had any business with Mr. Schneider in my life, and up to the time Benson was arrested I knew absolutely nothing of his relations with Mr. Taggart. I did not know such a man was in existence; and knew nothing whatever of any relations between Mr. Hyde and Mr. Allen.

I never had any acquaintance whatever with Mr. Woodford D. Harlan, and never had any conversation with him of any kind, in my life. I was never in Benson's office except on two occasions, and that was after I returned from New York in relation to the Aztec matter. Prior to the time of my coming to Washington in 1901, I had never been in Mr. Benson's office; and I never talked any business with Benson except the Aztec matter. I never had occasion to discuss anything with him. Benson was never in my office but once or twice, and that was in connection with the Aztec matter; and, after

I left Mr. Hyde's employ, he never was in my office. Before 1402 I went to Mr. Hyde's office in 1901, I did not even know Mr. Benson by sight.

The only intimation that I had that Mr. Benson was interested in these selection cases here, was on one occasion when Mr. Hyde came through Washington to attend the Lipton yacht races at New York. He then stopped at the offices of Britton & Gray, and while he was there he said that if I was to remain in Washington that he was going to charge part of my salary against Benson, and he added that he would probably not be able ever to collect it; but that he was going to try it anyhow. That was in October, I think, 1901. Mr. Hyde was then in Washington about five hours. He came to the offices of Britton & Gray and had a talk with Mr. Browne. Then he came into my office and brought Mr. Browne in with him, and we went to lunch. He got here, I think, about eleven or twelve o'clock, and we all went over to the New Willard for lunch. I had not known Mr. Hyde was coming, and I had a friend with me, John A. Scott, who was then living outside of Baltimore, and he came over to spend the evening with me, and he arrived before Mr. Hyde left, and he and I walked down to the station with Mr. Hyde. On that occasion, I was never alone with Mr. Hyde for a moment. The subject matter of his conversation was very largely in relation to a case in which he was interested, and which Mr. Browne was handling as his attorney. That was a case on appeal in the Land Office—a swamp basis case.

Cross-examination.

By Mr. BAKER:

When I came to Washington in December, 1902, I arrived the night before New Years, and saw Mr. Browne on the afternoon of the following day—New Year's day. I dined with him that evening at his house.

The letter of January 8th to which I have referred and the one I said I produced at San Francisco, was the result of a conference with Mr. Browne. Let me see: I referred to a joint letter, I think. My recollection is that there was one letter that was either signed by Mr. Brown and I jointly, or signed by Mr. Browne, but this letter of January 8th, I think, I signed myself. The copy of the joint letter was not found, I think, amongst the correspondence; and that satisfied me at that time that Mr. Browne had signed it; and it is possible that the letter that was read this morning had something to do with it, I do not know. Well, I don't know whether that was the joint letter; I cannot recall. I could not possibly recollect how many letters I wrote at this time. I sent Mr. Hyde a letter as often as it was required, or there was something to send for. I can't tell you how many times I wrote him telling him what he would have to do to overcome this suspension order. It is impossible to recollect. I wrote him a full letter; and I doubt not that it was supplemented. Prior to writing the letter of January 8th, I can't possibly recollect how many letters I had written to Mr. Hyde after advising with Mr. Browne in regard to what he would have to do to perfect his titles.

I cannot answer from recollection whether after I arrived in Washington and had a conference with Mr. Browne, I wrote Mr. Hyde any letter telling him what he would have to do to overcome the suspension order, until I wrote the letter of January 8, 1901.

"Q. Will you tell us how many letters you wrote prior to the letter of January 8th, that you call the letter of January 8th, taking the time from your first conference with Mr. Browne, in which you instructed Mr. Hyde what he would have to do in order to overcome this suspension order? A. I don't know that I had the information that would enable me to do it at that time.

"Q. Well, Mr. Dimond, you certainly know whether or not you wrote him two letters containing exactly the same advice: do you not? A. The tenor of my letters would probably all be the same in the matter of advice, if the character of my information was the same."

"Q. I want to ask you to read Exhibit 93, that says 'I have your letter of the 8th,' and tell us what was the subject matter of the letter referred to in that letter, without any regard to its date, whether it was dated the 8th or not. A. (After examining letter.) Well, from this I evidently wrote a letter on the 8th.

"Q. I want to know the subject matter of the letter to which this letter of January 15th is the reply, without any regard to the date. A. He says in that letter that it is impossible to comply with the request. Now, the request was to identify these people properly, and file the affidavits, in order to clear the selections from the suspension."

\* \* \* \* \*

1405 "Q. Now, I will ask you whether or not you wrote any other letter prior to the one mentioned in this letter in regard to how to have the titles made proper to suit the Government, or to

have the applicants identified. A. I cannot say whether I did or did not. That does not give me the recollection.

"Q. I will ask you whether you received any letter from Mr. Hyde prior to January 15th in regard to a request or an answer to a letter of yours in regard to how the applicants should be identified? A. I may have done so.

"Q. Was the letter referred to in this letter of January 15th produced at the hearing in San Francisco? A. My recollection is that it was.

"Q. And offered in evidence? A. If it was produced, it was undoubtedly offered in evidence.

"Q. Did you not say a while ago that the letter was there, and that you saw it there, and that it was produced there? A. I said that a letter was sent from here, and that I believed that the letter—because all of my letters were introduced there.

"Q. Did you not state here a while ago on the stand that you saw the letter to which this letter of January 15th is an answer; you saw it out there, and it was among the letters that were produced and offered, and went into the Government's possession? A.

Yes, I think I did; I think I did so state.

1406 "Q. Now let me ask you if this did not occur at San Francisco:

"Q. At the time that you arrived in Washington, was the fact that a suspension order had been made generally known among attorneys in Washington? A. It was known to Britton and Gray.

"Q. And you had already received a letter from Mr. Collins which showed the new order had been made? A. Yes, sir. I had not seen anybody else up to that time. I saw Mr. Browne first, and dined with him on New Year's day, and had a consultation with him in the evening.

"Q. Did you on that occasion state fully to Mr. Browne your conversation with Schneider? A. I did, in every particular.

"Q. All that he had told you? A. Yes, sir.

"Q. How long was it after you had had that consultation before you wrote to Mr. Hyde the result of your consultation with Mr. Browne? A. I do not know exactly whether it was hours or the next day. I think the correspondence will show that.

"Q. Do you remember under what circumstances you wrote to Mr. Hyde? Who wrote with you? A. I think the letter was written by Mr. Browne; we wrote a joint letter as the result of our conference.

"Q. Did you keep a copy of such letter? A. No, sir; I did not.

1407 "Q. Did that occur at San Francisco? A. I presume that that occurred at San Francisco. You are asking me to remember now what I remembered then of an event occurring before."

\* \* \* \* \*

"Q. I will read a little further. Were you not asked the following questions:

"Q. Have you such letter? A. No, sir; I have not. I remember very well what was in it, because it was after the result of a very care-



ful conference, and after reading some correspondence that was in Washington.'

"And then did Mr. Wheeler say:

'I will state to your Honor that I have made a personal request for the letter, and have been informed that Mr. Hyde could not find the letter?'

"Do you remember that having occurred?

"A. I think that that occurred. I had totally forgotten it.

"Q. And then were you not asked the following questions:

"Q. So far as you know, Mr. Dimond, you think Mr. Browne might have a copy of the letter?

"A. I think probably he has. I think he has.

"Q. State to the Commissioner the contents of the letter just as closely as you can so state.

"A. We told Mr. Hyde that as a result of our conference and the investigation that has been made, there was only one thing  
1408 for him to do; and that was to obtain an affidavit from every one of these individual persons represented by his selections—that is, the grantors of the base lands—and have each one of those persons properly identified by a judge of one of the courts of record, a judge of a circuit court, or a Congressman, in order to conclusively show that they were all in existence. The only question before either of us was the fact of the existence of these people.'

"Do you remember testifying to that? A. That is substantially what I have been trying to give now, that I did—that there was such a letter. I had the letter in mind.

"Q. Now, Mr. Dimond, I will ask you, after hearing this read, did or did you not produce the letter referred to in Mr. Hyde's letter of January 15th, at San Francisco? A. If it is not shown there that I did, then I probably did not; or it was not produced. \* \* \*

"Q. After having me read from the record there, and you having said that that is what occurred, I will ask you whether you want to change the statement you made this morning, that the letter of January 8th, or the letter that was mentioned in Hyde's letter of January 15th, was produced there and given to the Government? A. In the face of that record, my recollection was probably in error, if the record is correct."

I never did a single thing to expedite a case for Mr. Hyde, other than to know the requirements and try to meet them. When I was employed by Mr. Hyde I had no knowledge of California or  
1409 Oregon land law. While I was employed by Mr. Hyde, I acquired no knowledge of the California and Oregon land law, save where a question was asked in a letter and I had occasion to look up something for that reason. I did not have occasion to know anything about the land laws generally.

"Q. I will ask you what you were employed for? A. I was employed to take charge of these cases here in Washington—these selections.

"Q. What were you to do in regard to these cases? A. I was to do what I did do, list them, find out what was delaying them, and send out word to California as to what the requirements were.

"Q. And you started in in the employ of Mr. Hyde without absolutely any knowledge at all of the land laws of the bases of the cases that you were employed to look after? A. I did not have to have it at all, he told me.

"Q. He told you that, did he? A. Not at that time; no, sir.

"Q. When did he tell you that you did not have to have any knowledge. A. In his general conversation. I simply told him in the first place that my practice had been confined to probate law mostly, and to commercial matters, and that I knew nothing about land law; and he said that was not necessary, as his cases were before the Department, or the General Land Office.

At various times after I came to Washington, I would call for the files of Mr. Hyde's cases in the Land Office, and they would be given me just as they have been produced here in this court. I was supposed to run through these papers. When I first came to Washington I went to the Land Office with the Miller and Loux selections. I was not aware that they were Mr. Hyde's cases. On the contrary, I corresponded with Miller and Loux.

When I came to Washington, Mr. Hyde gave me these papers, saying that I could look these up preliminarily. As far as I know, Miller and Loux were clients of Mr. Hyde. The North Tonowanda people were clients of mine, and came to me through an entirely different source.

I went to Tucson in December, 1902. Mr. Hyde informed me of the suspension order in December, and he said he wanted me to see Mr. Schneider and ascertain what it was he had said. He told me that he was informed that the suspension order was based upon some statements Mr. Schneider had made. My recollection is that Mr. Hyde informed me that Schneider had stated that he (Hyde) had used fictitious persons, or the names of fictitious persons—that is my general recollection. Mr. Hyde mentioned the fact that Mr. Slack had made a trip to Tucson and talked with Mr. Schneider. When I took the train to go down to Tucson and see Schneider, I did not know that there was any question about the titles to Mr. Hyde's base lands. I merely knew that Mr. Schneider had made a statement, and that a suspension order had been made based upon some statement as to fictitious parties, and I was to go down and stop at Tucson on my way East to find out what Schneider had said. I arrived in Tucson the day before Christmas and saw Mr. Schneider. As nearly as I

can recollect, I found out from him that he had stated to people that he had obtained bogus titles for Mr. Hyde on a trip that he had made years before to Oregon. Schneider used the word "Bogus" in talking to me. He said he meant by "bogus" that they were names which were the emanation of his own mind. The only two names he could remember were Elizabeth Dimond and Jennie P. Blair. The Dimond selections were on the docket which I had; but I did not know at the time whether they were based upon Oregon titles at all. I did not believe Schneider's statements.

I think I then communicated with Mr. Hyde. As far as I can recollect now, I left Schneider with the impression that it was a

case of blackmail. Schneider said that he had been in Mr. Hyde's employ for a great many years, that Hyde had not treated him right, that Hyde had refused to shake hands with him since they parted, and that he had been living down there in Arizona and getting to thinking things over, and he was sore, and had it in for Hyde, and, consequently, he had made these statements to the Department.

"Q. Did you or did you not say anything to him about Mr. Hyde having given him \$5,000? A. I did, yes. I spoke of Mr. Hyde telling me that he had given Schneider \$1,000 as a wedding present, and \$5,000 as a settlement when they closed their business relations, and Schneider admitted that that was true. I also told him that Mr. Hyde had assured me that Elizabeth Dimond was a person in existence, and I think his reply was, 'Well, maybe', or 'He can't produce her'.

1412 "Q. Did he not say he would like to see Mr. Hyde produce her? A. No; he did not, I think, use that language. I think he either said, 'He can't produce her,' or something to that effect. I also told him that other people were involved and affected by it, because the greater portion of the lieu of Mr. Hyde had been sold to other persons, and that they were the sufferers from it."

He said he was very sorry it would involve anybody else, but he had it in for Hyde. I do not recollect that anything was said by Mr. Schneider about his testifying against Mr. Hyde, or anything said about his keeping quiet. I did not see Mr. Schneider's attorney. Schneider told me that he had made a statement to Colonel Zabriskie. The sole object of my visit there was to ascertain what Mr. Schneider had said to the Department.

I saw the law firm of Hereford and Hazard the day I arrived at Tucson before I saw Schneider. Mr. Hazard informed me that they, or clients of theirs, had purchased a great deal of lieu of Mr. Hyde's, and that they were interested in the matter of the suspension order. I told him the object of my visit. I met Schneider at the principal hotel there, the Willard Hotel, about twilight in the evening. Our interview lasted forty-five minutes, I should think; perhaps a little longer. I cannot fix the exact time when Schneider left the hotel.

When I left Tucson, I went to Chicago, and from *there* came east to Washington. Up to the time I saw Mr. Browne in Washington, I had not had a conversation with anybody else in reference to these fictitious individuals, except my talk with Schneider.

1413 I told Mr. Browne about my talk with Schneider. Schneider could only give two instances in which he claimed the names were fictitious—Elizabeth Dimond and Jennie P. Blair, but he said there were others. When I came to Washington I did nothing but confer with Mr. Browne and get information from him, and then write to Mr. Hyde about it. I obtained my information from Mr. Browne and Mr. Britton, and nobody else. Mr. Hyde knew that I was in constant conference with Mr. Browne. I did not get any information from anybody in the Land Office.

"Q. Is it not a fact that when you got back to San Francisco you wrote Mr. Browne a letter in which you referred to having seen certain Government inspectors? A. I wrote him a letter saying that

I had seen the Government inspectors, and I think I referred to them in that letter as Departmental gentlemen, with quotation marks. I referred to a visit that I had had.

"Q. Had you seen the Government inspectors? A. I had seen one of them.

"Q. And how did you come to see him? A. I wrote to Judge Pugh at the request of Mr. Hyde.

"Q. In other words, you were trying to carry out your suggestion contained in this letter, were you not? A. I was not.

"Q. Is it not a fact that Mr. Hyde got you to write to the Government Inspector, or, rather, did you not state he got you to write to them? A. He asked me if I would meet them, and it was just before I left him, he asked me if I would meet them and ask  
1414 them to investigate him to see who he was and what his friends were in San Francisco—the class of people."

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"Q. Tell us the exact conversation that occurred between yourself and Mr. Hyde in regard to meeting the Government Inspectors. A. Mr. Hyde had written to Mr. Browne or me about the inspectors being there, or asking whether it would not be well for me to see them, and at that time Mr. Browne advised against it. When I came back to San Francisco and before severing my relations, he asked me if I would not be willing to see them and tell them what I have stated. That was his sole request, and I could conscientiously do that, and I did it.

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"Q. Was this letter of February 12, 1903, written to Mr. Pugh or after your demand upon Mr. Hyde for a readjustment of your compensation? A. That letter was written while that was in abeyance and pending.

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"Q. Did you see Mr. Pugh after—— A. I did not.

"Q. Whom did you see? A. His associate called upon me—Mr. Steece.

\* \* \* \* \*

1415 "Q. What was the conversation you had with Mr. Steece?

A. I asked him if he had inquired as to Mr. Hyde's standing and acquaintance. Mr. Hyde was a normal school director; he had been chairman of the school board. His associations were good, and I asked him if he had any inquiries of that kind. That was all I had to say, and I said it; and Mr. Steece said he was sorry that I had nothing of greater importance to tell him, and left.

I never prepared a form of affidavit for Mr. Hyde to get applicants to sign. He started in to get affidavits, and got quite a number in a few days—I do not remember how many I did not get them for him.

"Q. What more did you know after your conversation with Schneider than Mr. Hyde himself told you before you saw Schneider? A. Mr. Hyde only told me of the fact that Schneider had named people as fictitious individuals, and he said that he

was not satisfied with what he had learned, and asked me to ascertain.

"The COURT: You have not quite answered the question. The question is what did you learn from Schneider in addition to what Hyde had told you.

"A. I cannot recall at the moment just what I stated, but the difference between whatever I stated as to what Mr. Hyde told me before I left and what I stated is what Mr. Schneider told me—

"The COURT: Without reference to what you stated before.

1416 "By Mr. BAKER:

"Q. Without reference to what you stated before; did you learn anything whatever? A. I learned this. I learned that Schneider was vindictive, that he was bitter, that he evidently, in my mind, had an ulterior motive; and I learned the particulars. He was a difficult man to get anything from.

"Q. Mr. Hyde told you, did he not, that he was vindictive, before you went down to see him? A. He believed he was untruthful and ungrateful. He said that there was nothing that Schneider could truthfully say that could in any wise hurt him.

"Q. As a matter of fact you did not learn anything from Schneider other than what Mr. Hyde had told you, so far as the fact of the fictitious signatures are concerned, or persons? A. I satisfied myself from his own statement of the fact that he had made such a statement.

"Q. Mr. Hyde knew that when he talked to you, did he not? A. Yes, sir; else he could not have told me what he did."

I did not see Mr. Hyde after leaving Tucson until I returned to San Francisco from Washington. I had my correspondence with him. I do not recollect that I wrote him from Arizona. I was only there for thirty-six hours. I think I first wrote him after I had seen Mr. Browne in Washington. I haven't a copy of that letter, unless it is among the correspondence here.

1417 "Q. Was that in the letter of January 8 that you referred to here? A. I do not think it was. You must remember that when I arrived in Washington I had no stenographer, and I may have written a letter to Mr. Hyde personally, of which I have no copy; and I have not the originals of those letters.

"Q. I will ask you whether or not in San Francisco, when you were on the stand, you did not testify that you telegraphed to Mr. Hyde from Arizona? A. If that is a fact of record, I presume I did. It was fresh in my mind then, and it is not now.

"Q. Did you not telegraph him. A. I presume I communicated with him.

The "demand" which I made to Mr. Hyde and mentioned in that letter was a demand for an increase in salary. I had spoken to Britton & Gray about the compensation I had been receiving, and it was agreed that I should ask for a larger salary from Mr. Hyde; and when I had the talk with Mr. Hyde I said he could do as he chose about the salary, but that unless he followed our advice, that neither I nor Britton & Gray would represent him. I made a de-

mand for a salary of \$500 a month. That was the amount Mr. Browne and I agreed upon before I left Washington that I should ask Mr. Hyde for. I may have wired Mr. Hyde from Tucson that I had seen Schneider and had a satisfactory interview with him, and I may have used a code. In order to save expense, I would use a code whenever the message exceeded ten words.

1418 "By MR. BAKER:

"Q. I will ask you whether or not, at San Francisco, you were not asked the following question? 'Have you any memory of having written or telegraphed to Mr. F. A. Hyde, from Tucson, Arizona? A. I am sure I wired him that I had a satisfactory interview.' A. Then, if I said that, I probably recollected it at the time.

"Q. Were you not asked the following question: 'Have you a copy of that wire?' And did you not make the following answer: 'No, I borrowed the code they kept in the office and sent a telegram just to the effect that I had seen Schneider and was leaving for Chicago?' A. If that is the record, that I presume is correct.

I severed my financial connection with Mr. Hyde on the 1st of March, 1903. After that, I signed some perfunctory letters, and some were signed by Herbert Clarke with my rubber stamp. Some were signed, I believe, even after I moved, but they had no reference to the selections of F. A. Hyde or F. A. Hyde & Company, as I remember. The Department was asking for replies. I mean, by perfunctory letters—ordinary letters in the course of the travels of the selections through the office, where they asked for proof of taxes being paid, or some office requirement.

I saw Mr. Benson twice in Washington. The two meetings were within two or three days of each other, on the one trip that I knew of his coming East. The first time I saw him at the office 1419 of Britton & Gray. The second time, I saw him at the New Willard Hotel, I think two days later.

I came down to the Willard Hotel and took lunch with him. We talked about the Aztec contract and of his visit to the Seligmans. After lunch we went upstairs to his room and he opened his dress suit case and was looking for the contract. There came a tap upon the door and he looked up at me with a sort of smile and asked me if I would step into the other room an instant. I did so and in a moment or two he opened the door and said 'All right,' and then he turned to me and said: 'I do not lay my hands on this contract. I will bring it over to the office,' and in the course of twenty minutes he was over there. I immediately went over to the office. Mr. Benson had a room at the Willard Hotel with a bath, and I slipped into the bath room and closed the door. Remained in there not more than two minutes. I cannot give the date, but I think it was in the spring of 1902. It must have been the month of May.

The witness' attention was then called to certain statements in a letter written to Mr. Browne on February 20, 1903, and he stated with respect thereto as follows:

"By Mr. BAKER:

"Q. You say 'the inspectors have left'; what knowledge did you have of that? A. Mr. Hyde informed me that the inspectors had left.

"Q. Did you or did you not have any knowledge of that  
1420 yourself? A. No; save the information I received from him.

"A. You say 'and again the conditions have changed.' What did you mean by that? A. I meant that he had told me he was proceeding with obtaining his affidavits, and he informed me that the inspectors had gone, disgusted and disappointed because there was nothing for them to obtain. That was his statement to me.

"Q. You say, 'and again the conditions have changed, for they went away with nothing that can help the Government.' A. That is what Mr. Hyde stated.

"Q. Now, I want to know what conditions had changed? A. General conditions.

"Q. What general conditions and how were they changed? A. They were changed by the fact that Mr. Hyde has asserted to me that he was proceeding with the obtaining of his affidavits; that there had been nothing for the inspectors to find, and consequently they had gone away without finding anything.

"Q. Changed from what; that is what I want to know? A. Changed from his position that he had heretofore or at times maintained, that he did not have to act, but that the Government should act.

"Q. When the Government inspectors left, according to this  
1421 statement and found nothing, then Mr. Hyde commenced to act? A. He had commenced to act prior to that, I think.

"Q. Then how were the conditions changed by the going away of the Government inspectors? A. I cannot remember the exact conditions at that moment, when I wrote that letter. I was writing to my friend, and as the thing was in my mind, from day to day.

"Q. Where did you get any knowledge that conditions had changed? A. From none except Mr. Hyde.

"Q. And where did you get the knowledge that the inspectors went away with nothing that would help the Government? A. Mr. Hyde so stated.

"Q. What knowledge did you have that Mr. Hyde knew anything about it? A. None, save his statement to me.

"Q. You add, further, 'and very much disgusted with the result of their investigations.' A. He said so, and said that it only went to prove that everything was as he had stated it, and that it was all right with him.

Redirect examination.

By Mr. VANDER VEER:

The code that I used at times in telegraphing to Mr. Hyde was not a private or confidential code. It was the common code—the public code—that anyone could read or decipher.

1422 By Mr. WORTHINGTON:

"Q. You used an expression yesterday—I have it in my notes, although I cannot find it at this moment in the stenographer's report—that I did not quite understand. You said that Mr. Schneider mentioned certain names to you and told you they were emanations of his own mind. Did he say they were emanations of his own mind when he was getting the applications, or emanations of his mind when he was talking to Holsinger? A. He said he had in his statement said that these names were emanations of his own mind when he used them.

"Q. I wish you would explain to me clearly what you mean, whether he was referring to what he was doing when he was in Oregon, or what he was saying when he was talking to Holsinger? A. In recounting it, he said that he had put those names in the papers. He did not say anything about Holsinger."

In reference to my various talks with Mr. Browne in the early part of 1903, my understanding was that Britton & Gray were under a retainer from Mr. Hyde in reference to those matters. I knew that they had been under a retainer during the entire time that I was here. They had several cases for him in their hands; and I recalled their receiving a retainer of \$500 from him in connection with these cases, and also another retainer in connection with what I referred to as the Swamp Base case. I think these retainers were paid to them

after I came to Washington—some time in the fall, I should say; from that time on I consulted them all the time. They were always ready to consult with me from the time I arrived.

I never received any information, directly or indirectly, about the suspension order from either Harlan or Valk.

Britton & Gray were very largely interested in the Aztec matter and the negotiations which led up to the final contract with the Secretary of the Interior. They represented the Atchison, Topeka & Santa Fe Railroad, and also, I think, the Manistee Lumber Company, who owned lands in that section.

"Q. In reference to the visit of these inspectors to San Francisco, do you recall whether Mr. Hyde said anything to you at that time before you saw Mr. Steece, with reference to what he would be willing to do if the inspectors should come to him?

"Mr. BAKER: I object.

"Mr. WORTHINGTON: I want to know what information you had at the time of that interview as to what Mr. Hyde was willing to do if the inspectors should come to him.

"The COURT: I do not quite see how that is admissible. He said that he wrote as he did because Mr. Hyde asked him to do so and he thought it proper to do so, because he knew of Mr. Hyde's standing in the community.

"Mr. WORTHINGTON: I ask it as bearing upon his conduct at the time, and think it to be very important that the jury should know.

"The COURT: I do not think what he thought Mr. Hyde had in his mind would be material.

1424 "Mr. WORTHINGTON: I offer to show what he said to him.

"The COURT: If it was nothing that he was to act upon, or act with reference to, I should not think it would be material.



"Mr. Worthington stated the following out of the hearing of the jury:

"I am in this position in regard to this matter, my information is, but not from this witness, that Hyde had told him if the inspectors should come there he would show them the books and papers and everything that he had. I do not know that the witness will answer the question in that way. My information is that that is the fact, and I ask it with the expectation of eliciting a reply that Hyde had told him that, and that he believed it, and that was his belief in the early part of 1903.

"The COURT: If he indicated that to Mr. Steece, or intended when he wrote the letter to do so, or was directed by Mr. Hyde——

"Mr. WORTHINGTON: I have no information from any source as to that.

"The COURT: I will exclude it, and you may note an exception."

To which ruling of the Court the defendants and each of them then and there duly excepted.

By Mr. VANDER VEER:

"Q. In this letter of February 13, 1903, to Mr. Browne, which reads as follows:

1425 "MY DEAR BROWNE: You have no doubt, been expecting to hear from me and wondering why no letter or telegram has been sent—but when I arrived home, one whole day late, after a very hard trip, I found a state of affairs at Sacramento that made it necessary for me to instantly go there to fight through a bill of great importance that was in danger of being defeated, and I deemed it best to show my entire good faith by saving the day even though I had to put off my talk."

"I want to ask you what was the nature of that bill that you refer to there? A. I think that bill referred to something in connection with swamp land."

By Mr. WORTHINGTON:

At the time the suspension order was made, the Government Land Office kept on calling for information and taking action in the cases to which the suspension order applied. I know that.

Cross-examination.

By Mr. BAKER:

The suspension order covered the cases of F. A. Hyde and F. A. Hyde & Company.

That was the information that I had always had. I got it from the statement that Mr. Hyde originally made to me regarding his selections, and also from a letter that Jeremiah Collins of Washington sent to me, dated December 8th, 1902. The letter was addressed to me at Montgomery Street, San Francisco, California, and the first two paragraphs read as follows:

1426 "Of course you know of the suspension order affecting the various reserve cases made in the name of Mr. Hyde, or in

which he appears either as selector or attorney in fact. We have tried to get at the bottom of this order and to learn why it was made, or upon what ground it is based.

"The people in Division R seem to have no information on the subject, with the possible exception of Mr. McPhaul, who refuses to enlighten us. The Commissioner has been interviewed on the subject, and he refuses also to give out anything at the present time, preferring to look wise and leave the impression that he has discovered a mare's nest. Kindly advise what there is at the bottom of this. We are completely at a loss here to understand it. If you do not know what to make of it, give us at least your surmise."

This letter I received in due course of mail.

*Woodford D. Harlan.*

By Mr. WORTHINGTON:

After this suspension order of November 21, 1902, was made, I did not give Mr. Dimond any information in regard to it, directly or indirectly. I do not recall that I ever gave any information to anybody in regard to it. I do not think that I ever gave Mr. Benson any information about the Suspension order.

1427

*William E. Falk.*

After this suspension order of November 21, 1902, was passed, I did not give Mr. Dimond any information in reference to it, directly or indirectly. I did not give any information in regard to it to anybody. In September, 1902, I had been transferred to another division of the office.

*Thomas G. Gerdine.*

Direct examination.

By Mr. CAMPBELL:

I am the geographer in the United States Geological Survey, and have been connected with the Geological Survey about fourteen years. I am familiar with this exhibit marked, "California, Bridgeport, Quadrangle," to the extent that it has come under my supervision as geographer of the Geological Survey.

Section 36, township 3, N. Range 24, E., shown on this map is about thirteen miles from Bridgeport, the county seat of Mono County, California. There is one wagon road about six miles, and another about ten miles from this section. It is about two and a half miles from the May Lundy Mine, and about the same distance from the Dunderburg Mine; and about one and one-half miles from the southern boundary of this section to the nearest road or trail. It is about eighteen or twenty miles from the nearest railroad. The highest point in the section is 12,365 ft. and the lowest point about 9,700 ft. elevation.

## 1428 Cross-examination.

By Mr. PUGH:

I have never been upon this road myself, and my information is obtained from the map. Some of these roads are considered first-class, and some second-class roads. The road that is nearest to this section is marked on the map as a second-class road. The distinction we make between a first-class and a second-class road—for instance, a first-class road is what we call a through road, corresponding to what a pike is in the East, and a second-class road we call a road to a farm house, or some roadway away from the main pike. No timber is shown on this map. As a rule, timber sheets are returned with these maps, but I have not that here, and I cannot say whether it is on file in the office or not.

*Joseph G. Campbell.*

## Direct examination.

By Mr. WORTHINGTON:

There is a person by the name of Jennie Blair who resides in San Francisco. I have known her for fifteen years. She is quite a society young lady, and is said to be what they call a "bachelor girl."

HENRY P. DIMOND, being recalled, testified that he is in no wise related to any person by the name of Elizabeth Dimond, whose name has been mentioned in this case; and that he never knew such a person.

1429 At this point it was agreed by and between counsel for the defendants and counsel for the Government in this case that the firm of Britton & Gray is composed of Mr. Alexander Britton and Mr. A. B. Browne, whose correspondence with Mr. Dimond and Mr. Hyde is in evidence; and, further, that Britton & Gray knew of the suspension order which was passed on November 21, 1902, on the eighth day of December, 1902.

By agreement of counsel, certain telegrams and letters passing between the defendant Hyde and the firm of Britton & Gray are put in evidence, and are as follows:

1430

*(Telegram.)*

65 Ch Bx. 30 Paid.

SAN FRANCISCO, CAL., Dec. 9th, '02.

Britton &amp; Gray, Glover Building, Wash., D. C.:

Reported that Commissioner has suspended all forest lieu selections based on school sections in California and Oregon on allegation of fraud in producing title to base land. Investigate and telegraph.

F. A. HYDE.

S P. M.

(Endorsed in pencil:)

"Ans. Dec. 10."

(Telegram.)

104 Ch. Bx. Co. 18 Paid.

SAN FRANCISCO, CALIFORNIA, Dec. 9th, '02.

Britton &amp; Gray, Washington, D. C.:

Commissioner says Secretary ordered suspension what allegations in what form by whom is proposed and when telegraph.

F. A. HYDE.

911P.

(Endorsed in pencil:)

"Ans. Dec. 10."

Copy.

DECEMBER 10, 1902.

F. A. Hyde, No. 415 Montgomery St., San Francisco, California:

All officials very secretive but believe order made November twenty-first suspends all your selections based on school lands in Sierra Cascade Pine Mountains and Lake Tahoe Reservations. Are now endeavoring to ascertain details.

(Signed)

BRITTON AND GRAY.

1431

Copy.

DECEMBER 10, 1902.

F. A. Hyde, 415 Montgomery St., San Francisco, California:

On our personal application to Secretary and Commissioner both decline at present to state cause of suspension. Order apparently effective against sixteenth and thirty-sixth losses in Sierra, Cascade, Pine Mountain and Lake Tahoe Reserves.

(Signed)

BRITTON AND GRAY.

1432 Thereupon, counsel for the defendants called to the witness stand C. M. DALZELL, Chief Clerk of the Dead Letter Office of the Post office Department, and offered to prove by him that the envelopes referred to in the evidence of the defendant Schneider, addressed to him under the name of John P. Jones, never reached the Dead Letter office.

"Mr. WORTHINGTON: The whole evidence was offered, your Honor, for the purpose of explaining the point which the Government brought out on the cross-examination of Mr. Schneider, that he had gone under the name of John P. Jones, and that the reason for that, or one reason for it, was that his mail was being tampered with. Now, the evidence this morning tends in that direction; but it leaves room for the Government to contend that those letters have been to the Dead Letter Office, and have been opened there, and might have gotten in the possession of the Secretary of the Interior or Mr. Burns honestly. We offer to call this witness for the purpose of closing that gap, and showing that necessarily somebody must have been committing a greater crime than is charged against any of these defendants, in robbing the mail.

"Mr. BAKER: I think that statement is not warranted by any evi-

dence in this case, and is not warranted by what the envelopes were offered for. We offered the envelopes for one purpose, and now they say they are going to argue that they were offered for another. The envelopes do show on their face that they went to the place in Mexico, and from that place in Mexico they went to another place in Mexico. Now, that is all they show.

"Mr. WORTHINGTON: Yes; and they show that they came  
1433 back to Tucson——

"The COURT: I do not think I will allow this matter to go in for the purpose of creating prejudice against the Government, or arguing that somebody has committed a graver offense than the defendants have. I think we will stop it where it is. I will exclude your offer, and note an exception. I think I have allowed more than the law would justify, if strictly held.

"Mr. WORTHINGTON: I would like to make a formal offer, if your Honor please, at the bench, of just exactly what we offer to prove.

"(The following proceedings, until otherwise noted, took place out of the hearing of the jury:)

"Mr. WORTHINGTON: We offer to prove by C. M. Dalzell, chief clerk of the Dead Letter Office, who is present here in court, that the envelopes which were offered in evidence this morning never reached the Dead Letter Office.

"The COURT: I will exclude that, and note an exception."

To which ruling of the Court counsel for the defendants and each of them duly excepted.

Thereupon, counsel for the defendants, and each of them, announced that they had no further evidence to offer.

Thereupon counsel for the Government announced that they, too, rested.

This was the substance of all the evidence in the case.

Thereupon, counsel for the defendants requested the Court to give to the jury the following instruction:

1. The jury are instructed to find a verdict of not guilty  
1434 as to all the defendants."

But the Court refused to give such instruction to the jury. To which ruling of the Court counsel for defendants, and each of them duly excepted.

Thereupon counsel for the defendants requested the Court to give to the jury the following instruction:

"2. The jury are instructed to find a verdict of not guilty as to the defendant Schneider."

But the Court refused to give such instruction to the jury. To which ruling of the Court counsel for defendants, and each of them duly excepted.

Thereupon counsel for the defendants requested the Court to give to the jury the following instruction:

"3. The jury are instructed to find a verdict of not guilty as to the defendant Dimond."

But the Court refused to give such instruction to the jury. To which ruling of the Court counsel for defendants, and each of them duly excepted.

Thereupon counsel for the defendants requested the Court to give to the jury the following instruction:

"4. The jury are instructed to find a verdict of not guilty as to the defendant Benson."

But the Court refused to give such instruction to the jury. To which ruling of the Court counsel for defendants, and each of them duly excepted.

Each of the four foregoing instructions was requested upon the grounds stated in support of the motion which the defendants made to take the case from the jury at the close of the Government's evidence.

1435 Thereupon, counsel for the defendants requested the Court to give to the jury the following instruction:

"5. The jury are instructed to render a verdict of not guilty as to all the defendants upon counts numbered 2 to 14; 15 to 21; 23 to 28; and 30 to 34—all inclusive."

But the Court refused to give such instruction to the jury. To which ruling of the Court counsel for the defendants and each of them duly excepted.

Thereupon counsel for the defendants requested the Court to give to the jury the following instruction:

"6. The jury are instructed to render a verdict of not guilty as to counts numbered 1, 15, 22, and 29."

But the Court refused to give such instruction to the jury. To which ruling of the Court counsel for defendants, and each of them duly excepted.

Thereupon counsel for the defendants requested the Court to give to the jury the following instruction:

"7. The jury are instructed to render a verdict of not guilty as to counts 35 to 42, both inclusive."

But the Court refused to give such instruction to the jury. To which ruling of the Court counsel for defendants, and each of them duly excepted.

Thereupon, counsel for the defendants requested the Court to give to the jury the following instruction:

"10. Unless the jury are satisfied by the evidence beyond a reasonable doubt that the defendants Hyde and Benson are both  
1436 guilty as charged in the indictment on trial, they should render a verdict of not guilty as to all the defendants."

But the Court refused to give such instruction to the jury. To which ruling of the Court counsel for defendants, and each of them duly excepted.

Thereupon counsel for the defendants requested the Court to give to the jury the following instruction:

"12. If the jury are not satisfied by the evidence beyond a reasonable doubt that the defendant Dimond in filing or causing to be filed in the Office of the Commissioner of the General Land Office in Washington the several papers which are set forth as overt acts in counts 2 to 14; 15 to 21; 23 to 28; and 30 to 34—all inclusive—of the indictment, was in collusion with one or more of the other defendants in attempting to defraud the United States, by the means

set forth in the indictment, or some of such means, they will render a verdict of not guilty as to all the defendants as to each of said counts."

But the Court refused to give such instruction to the jury. To which ruling of the Court counsel for defendants, and each of them duly excepted.

Thereupon, counsel for the defendants requested the Court to give to the jury the following instruction:

"14. The defendants are not charged by the indictment on trial with conspiracy to obtain, by fraudulent means, from the States of Oregon and California lands in any particular forest reserve 1437 or reserves, or to obtain from the United States, by way of exchange, land in any particular state or locality. The charge is of a conspiracy, general in its terms both as to the lands to be obtained from these states and from the United States. Even, therefore, if the jury should find that two or more of the defendants conspired to obtain lands from one or both of those States in some particular forest reserve, or to obtain from the United States, by way of exchange, land in some particular State or locality, that would not of itself be sufficient to justify a verdict of not guilty as to the defendants found to have so conspired. The defendants can be convicted, if at all, only of the conspiracy charged and no other."

But the Court refused to give such instruction to the jury. To which ruling of the Court counsel for the defendants, and each of them, duly excepted.

Thereupon counsel for the defendants requested the Court to give to the jury the following instruction:

"15. The jury are instructed that there is no evidence in this case legally tending to show that the defendants, or any of them, entered into an agreement to defraud or attempt to defraud the United States by means of forgeries, or by the use of the names of fictitious persons."

But the Court refused to give such instruction to the jury. To which ruling of the court counsel for defendants and each of them duly excepted.

Thereupon, counsel for the defendants requested the Court 1438 to give to the jury the following instruction:

"16. The jury are instructed that there is no evidence in this case legally tending to show that Elizabeth Dimond was a fictitious person."

But the Court refused to give such instruction to the jury. To which ruling of the Court counsel for defendants, and each of them duly excepted.

In the course of the argument by counsel for the defendants in support of the foregoing instructed numbered 15, the following occurred:

"Mr. WORTHINGTON: No, 15? How does that stand with what your Honor decided as to Benson this morning? That is important for us to know—the use which can be made of it.

"The COURT: No, 15?

"Mr. WORTHINGTON: Yes; No. 15 is the one which concerns the

very question which I understood your Honor to decide—this morning in our favor.

"The COURT: I did not observe that at this time. I will read that once more.

"Mr. WORTHINGTON: Your Honor does not grant that prayer?

"The COURT: Oh, yes; I refuse that. So far as Benson is concerned I grant it; but they may elect to go to the jury as to the other defendants, leaving Benson out; so that I could not say there was no evidence as to the other defendants. But if they go to the jury including Benson, of course that will have to be granted. But for the present I will refuse it, because I do not know what election the Government may make."

At a later point in the argument in reference to the same 1439 instruction the following occurred:

"The COURT: Mr. Worthington had one point.

"Mr. WORTHINGTON: I do not see how any possible difficulty can arise during the discussion of the case as to the law now, your Honor, except as to this question about the alleged forgeries and fictitious persons. Your Honor has declined to accept some suggestion that was made a moment ago because you could not tell whether the Government might not elect to drop Mr. Benson and go on as to the others. I think we ought to be informed as to that. I have had some intimation from counsel as to what they will do about that; and——

"The COURT: I presume they can tell you now what their course will be.

"Mr. WORTHINGTON: You are not going to drop Mr. Benson?

"Mr. BAKER: Certainly not.

"Mr. WORTHINGTON: And that being so, I do not see how that part of the indictment which refers to the use of fictitious names or forgeries can go to the jury at all. Otherwise it would go as to the other defendants as to one conspiracy, and as to Mr. Benson as to the other.

"The COURT: The case will not be submitted upon that part of the indictment. I shall tell the jury that there is no evidence tending to show that Benson was chargeable under that part of the indictment; and the case going to the jury against all of them, that will be left out of consideration.

Mr. BAKER: Of course, as I understand that would apply to Benson alone, if the Court please?

"The COURT: Yes. Well——

Mr. BAKER: And of course that would in no way prevent 1440 us from arguing to the jury the question of forgeries as reflecting upon the fact that these people were dummies.

"The COURT: I think the evidence is admissible, and will remain in the case for proper purposes.

"Mr. BAKER: Yes.

"The COURT: But the case will not be submitted upon those allegations of the indictment.

"Mr. WORTHINGTON: Then in order to make clearly our point in regard to that, your Honor, we move to instruct the jury to give



no consideration at all in the case to the evidence relating to the alleged forgery of the name of Elizabeth Dimond, or as to her being a fictitious person, on the ground that it is not competent evidence for any purpose, as the case is not to go to the jury as to a conspiracy in regard to forgeries and fictitious persons.

"Mr. BAKER: To which we object.

"The COURT: I am inclined to think, now, that the evidence would have been admissible if those allegations had not been in the indictment. But the evidence must be treated as if they were not in the indictment.

"Mr. WORTHINGTON: But they are admissible as bearing upon the other questions?

"The COURT: I think they are admissible upon the other questions.

"Mr. WORTHINGTON: I understood your Honor to so indicate; and I merely make the motion now so as to save the point.

"The COURT: Yes; that is proper. That motion will be made and I will overrule it, and grant you an exception.

"Mr. WORTHINGTON: Then I will made the same motion 1441 as to all the defendants, as to all the evidence relating to the use of alleged fictitious names or forgeries in Oregon—the Don Alexander papers—for the same reason.

The COURT: Yes; the same motion, the same ruling and exception."

To each of which rulings of the Court, refusing to grant the said motions, counsel for the defendants and each of them duly excepted.

Thereupon counsel for the defendant Benson requested the Court to give to the jury the following instruction:

"1. There is no evidence in this case that the defendant John A. Benson, was a party to any agreement or conspiracy with any of his co-defendants which involved the use of the names of fictitious persons or of forged applications, affidavits, or conveyances, in the acquisition of lands from the State of Oregon, or the State of California; or that he had knowledge that the names of fictitious persons or forged applications, affidavits, or conveyances had been used, if they were so used in the acquisition by any of his co-defendants of any such lands and you are therefore instructed that as to the defendant Benson your verdict should be not guilty.

"But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants, and each of them, duly excepted.

Thereupon counsel for the defendant Benson requested the Court to give to the jury the following instruction:

"4. The charge in this case is conspiracy, that is to say of an unlawful agreement. The offense charged requires the con- 1442 currence of two or more persons and is not established by proof of unlawful or wrongful acts of the defendants acting separately and not jointly.

"You are therefore instructed that if the defendant Hyde obtained lands mentioned in the indictment by the use of unlawful means, and that the defendant Benson obtained other lands by the

use of unlawful means, but do not find from the evidence beyond a reasonable doubt that in obtaining such lands by said unlawful means they were acting jointly and with a common purpose to use such lands to defraud the United States, neither of them should be convicted."

But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants and each of them duly excepted.

Thereupon counsel for the defendant Benson requested the Court to give to the Jury the following instruction:

"7. There has been introduced in evidence a contract entered into between defendants Benson and Hyde providing that Benson shall have the right and privilege of selling outside of the State of California certain scrip from the Cascade Forest Reserve in the State of Oregon."

I instruct you that they had the lawful right to enter into such an agreement, if the same was entered into in good faith and without fraud, and I further instruct you that the same is presumed to be fair, honest and free from fraud and that the burden of showing that the same agreement was not what it purports to be is upon the prosecution and this they must establish by the evidence beyond a reasonable doubt."

1443 But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants and each of them duly excepted.

Thereupon counsel for the defendant Benson requested the Court to give to the jury the following instruction:

"9. Evidence has been introduced in this cause tending to show that certain applicants for lands mentioned in the indictment and bill of particulars has no personal knowledge of the character of the lands applied for by them respectively or whether it was or was not occupied.

"The jury are instructed that the indictment does not charge the use of applications so made to have been one of the methods employed or agreed to be employed by the defendants to obtain lands from the State of California or Oregon and the evidence thereof cannot be used against the defendants except for the purpose of enlightening the question whether they or any of them employed in the obtaining of such lands the devices described in the indictment, and cannot be used for any purpose whatever unless you shall find from the evidence beyond a reasonable doubt that the defendants knew that the respective applicants had no knowledge of the facts stated in their affidavits.

"There has been no evidence introduced tending to show that in any case the statements as to the character of the land and its non-occupancy were in fact false, and in the absence of such evidence you are to consider and treat such statements as being true."

But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants, and each of them duly excepted.

Thereupon counsel for the defendant Benson requested the Court to give to the jury the following instruction:

"10. Evidence has been introduced tending to show that certain of the applicants for school land had no personal knowledge of the character of the lands applied for, or that it was not adversely occupied. I instruct you that such want of personal knowledge in the applicant in any case did not make his application void and that although the information as to the character of the land and the non adverse occupancy was furnished by another, yet if the applicant believed it and the statements made were true in fact, the application was neither false or fraudulent."

But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants, and each of them duly excepted.

Thereupon counsel for the defendant Benson requested the Court to give to the jury the following instruction:

"11. The jury are instructed that in the event that they shall have doubt upon any substantial matter of fact in the case they should resolve that doubt in favor of the accused."

But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants, and each of them duly excepted.

1445 Thereupon counsel for the defendant Schneider requested the Court to give to the jury the following instruction:

"1. The jury are instructed that if they believe from the evidence in this case that when the defendant Schneider went to Oregon in August 1898 and procured the applications of various persons to purchase School lands, he was so acting as the employee for hire of the defendant Hyde, and had no knowledge of the location of said lands and no knowledge of the disposition said Hyde proposed to make of said lands, then they should acquit the defendant Schneider."

But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants, and each of them duly excepted.

Thereupon counsel for the defendant Schneider requested the Court to give to the jury the following instruction:

"3. The jury are instructed that if they believe from the evidence in this case that when the defendant Schneider went to Oregon in August, 1898, and procured the applications of various persons to purchase school lands, or at any other time he had no understanding or agreement with any of the other defendants herein as to the disposition to be made of said lands, then no act committed by any of the other defendants or any person acting for them or either of them, or under their or either of their direction, in exchanging or attempting to exchange said lands for lands of the United States is binding upon the defendant Schneider, and they should acquit him."

But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants, and each of them duly excepted.

Thereupon, counsel for the defendant Schneider requested the Court to give to the jury the following instruction:

"4. The jury are instructed that unless they should beyond a

reasonable doubt, find from the evidence that the defendant Schneider, consciously and intention-ly, participated in the conspiracy alleged in the indictment, (if they should find such conspiracy to have been proven by the evidence) within three years prior to the 17th day of February, 1904, the date of the finding of the indictment, then they should acquit the defendant Schneider.

"And the jury are further instructed that in order to find that the defendant Schneider consciously and intention-ly participated in said alleged conspiracy, they must first find that he was a party to this original conspiracy, if it existed, and within said years participated in some act done in furtherance of said conspiracy."

But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants, and each of them duly excepted.

Thereupon counsel for the defendant Schneider requested the Court to give to the jury the following instruction:

"5. The jury are instructed that unless they believe from the evidence, beyond a reasonable doubt, that the defendant Schneider was in the alleged conspiracy, if they find it existed prior to the 17th day of February, 1901, then the jury are not to consider any statements alleged to have been made by said defendant to the witnesses, Holsinger, Burns, and Corbett as proof of the fact that said defendant was in said alleged conspiracy within three years next before the 17th day of February, 1904."

But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants, and each of them duly excepted.

Thereupon counsel for the defendant Schneider, requested the Court to give to the jury the following instruction:

"6. The jury are instructed that they are not at liberty to consider any statements made by defendant Schneider to the witnesses Holsinger, Burns and Corbett, as proof of the fact that said defendant was in the alleged conspiracy prior to February 17, 1901, if they find said alleged conspiracy existed."

But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants, and each of them duly excepted.

Thereupon, counsel for the defendant Schneider requested the Court to give to the jury the following instruction:

"7. The jury are instructed that unless they find from the evidence, beyond a reasonable doubt, that the defendant, Schneider was in said alleged conspiracy, if they find it existed, prior to the 17th day of February, 1901, then they shall acquit the defendant Schneider."

But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants, and each of them duly excepted.

Thereupon counsel for the defendant Schneider requested the Court to give the jury the following instruction:

"8. The jury are instructed that before they can consider the contents of the so-called Holsinger report for any purpose in this

case, even as against the defendant Schneider, they must first find it established by evidence in this case to their satisfaction that the statements or some of them contained therein were made by defendant Schneider himself or by his authority to the witness Holsinger.

"The jury are further instructed that even if they should find it established to their satisfaction from the evidence in this case that defendant Schneider did make to the witness Holsinger the statements contained in said report, then the jury are not to give any weight as evidence to said statements, except in so far as in the opinion of the jury they might tend to affect the credibility of the defendant Schneider as a witness, unless they further find that said statements or some of them were in fact true."

But the Court refused to grant the instruction. To which ruling of the Court counsel for the defendants, and each of them duly excepted.

Thereupon counsel for the defendant Schneider requested the Court to give to the jury the following instruction:

"9. The jury are instructed that there is no evidence in this case tending to show that the defendant Schneider was a party to any conspiracy which embraced or included the unlawful payments of any sums of money to Woodford D. Harlan and William E. Valk."

But the Court refused to grant the instruction. To which 1449 ruling of the Court counsel for the defendants, and each of them duly excepted.

Each of the foregoing instructions which was offered by counsel for the defendants Benson, Dimond and Schneider, respectively, was offered by such counsel on behalf of all of the defendants.

Thereupon Mr. Arthur B. Pugh, of counsel for the Government, proceeded to make the opening argument for the Government to the jury.

In the course of his argument the following occurred, when Mr. Pugh was commenting upon the evidence of the Government witness Thomas S. Burns, the notary public:

"He (Burns), was then asked questions as to the manner in which he did business for John A. Benson, and answered substantially the same way, in the same manner. Having his memory refreshed by the statement read to him that he had made to Mr. Neuhausen, and going over the matter again in his mind, he admitted that they were all true.

"Now, you take this whole testimony, gentlemen, and get at, in your own minds, what is the truth of the matter. That is all I want, nothing but the truth. If a witness is on the stand, and he is slow to testify, measure him by his manner on the witness-stand. Get from him what he says, and weigh it, and determine for yourselves that which is true and that which is not true. That is your duty as to every witness, gentlemen of the jury, whether it is a witness for the Government or against the Government; and I am not denouncing my own witnesses by telling you that.

1450 "Mr. BAKER: He admitted that those statements were true and correct. That is the testimony.

"Mr. PUGH: I know he did. That is what I am reading them for.

"Mr. WORTHINGTON: I understood the Court to admit that because it was simply a corroboration of what he testified to?

"The COURT: It was not quite that way.

"Mr. WORTHINGTON: Let me say that I wish to take an exception to counsel being allowed to use the statement made to Neuhausen for any purpose except for the purpose of showing the jury that the witness is not a credible witness.

"The COURT: The testimony is being used, as I understand it, and may be used, for the same purpose for which it was admitted, which I distinctly stated at the time. The Court allowed his memory to be refreshed by asking him certain questions as to what he had previously said, and on being reminded of those, he said that they were true, thereby making them a part of his testimony. It was only a method of introducing that evidence, so that he made it his own, and verified it. The jury have nothing to do with that at all."

To this ruling of the Court, counsel for the defendants and each of them duly excepted.

Later in the course of Mr. Pugh's argument, the following occurred:

"Now this woman Tillie Fleischauer is an interesting witness, if not entertaining. You remember her on the witness stand, 1451 and you remember, probably, what explanation she made of her statement to Mr. Neuhausen; and I want to read her statement to Mr. Neuhausen, which she admitted after refreshing her memory was true——

"The COURT: I wish to say a word about statements where the witness was asked whether he or she had not said something to somebody else. The fact that they did say it to somebody else was not evidence. That was simply asked in order to bring their minds to the point. You are not to give any weight to the fact that she or this other witness said it to Neuhausen. That was a mere preliminary, to get the witness's attention to the point that was being examined on; and no stress should be laid on the fact that the witness acknowledged having said it to Neuhausen. That has nothing to do with it.

"Mr. PUGH: Not at all. The point I am making is not that these things are true because she stated them to Neuhausen, but when her memory is refreshed by reading the statements made to Neuhausen over to her, that calls the fact to her memory, and then if she says that is the true statement, that is what I mean. You take her evidence on that point. The fact that she said it to Mr. Neuhausen is not to be weighed as evidence to show that it is true, but it is her statement now about it. The question was:

"I want to ask you whether or not you did not state to Mr. Neuhausen, in referring to the manner in which you obtained the land, as follows:

"One day not more than ten years ago Mr. Benson called me up on the telephone at my residence No. 727 H Street—I had 1452 moved from 1605½ Devisadero Street—and made an appointment to meet me at the corner of Montgomery and Sacramento Streets. He did not state over the telephone what he wanted to see me about; but when he met me at the street-corner he asked

me to go to a notary on Montgomery Street near Sacramento Street and sign some papers.

‘— Did you make that statement to Mr. Neuhausen? A. Yes.

‘Q. Is that true? A. Yes; that is true.’

‘Now that shows how her purchase was made. She says now, after going over the matter again and again to refresh her memory. Yes; that is true.’

‘Q. Did you make the further statement?’ ‘A. I went with Mr. Benson and signed the papers before the notary, but I have not the slightest idea what the nature of the papers was. I signed the papers because I didn’t wish to hurt Mr. Benson’s feelings by declining to do so. I did not examine the papers at all, and Mr. Benson did not tell me that they related to lands.

‘— Did you make that statement to Mr. Neuhausen? A. Yes; I made the statement.

‘Q. Is that so? A. Yes.’

Thereupon, Mr. A. A. Birney, of counsel for the defendant Benson, argued the case to the jury; and in the course of his argument the following occurred, when he was discussing the testimony of 1453 the Government witness, Greenblatt, a notary public:

‘Now, gentlemen, I am charitable enough to say that Mr. Greenblatt, in doing that, is perhaps not open to the utmost blame, because it has been testified here that every notary apparently on the Pacific Coast, with whom we have had any acquaintance, the notaries from Oregon and the notaries from California, did this thing.

‘Those who have testified here evidently did not think that they had done wrong, for they testified that it was the universal custom between all the notaries there to certify papers in this way, when they knew the individual or knew that the paper came from a source which they could trust.

‘Now, gentlemen, if it was the custom of those notaries—

‘Mr. BAKER: I do not want to interrupt you; but I understand that the notaries were testifying for themselves and there is no evidence that it is the universal custom.

‘Mr. BIRNEY: They have testified, each one of them, that it was the general custom. Each one of them has testified that it was a general custom in San Francisco to do just that thing.

‘Mr. WORTHINGTON: For bankers and business people and corporations.

‘Mr. BIRNEY: Certainly; for bankers, business people and corporations. You have got here Mr. Liebes, who is certainly a man not of the street or of the gutter. He is a man engaged in large transactions; and yet he has done that sort of thing, because he

knew it was the general custom and he did not think there 1454 was any harm in doing it. These witnesses have testified to

what they did in pursuance of the general custom, and in pursuance of what they understood to be without blame, although we may condemn it sitting here in the atmosphere in which we are—

"The COURT: I do not think they said they thought it was without blame.

"Mr. BIRNEY: No sir.

"The COURT: They did not go that far.

"Mr. BIRNEY: They did not; I assume it from the fact that these men were holding appointments from the state of their important offices and they testified that it was the universal custom, and they fell in with it because it was the general custom.

"The COURT: I do not think they said it was the universal custom. It became quite a custom, but that does not affect the law, of course.

"Mr. BIRNEY: Certainly not, your Honor; and I am not acquitting them of blame for doing it; but I am here arguing that the jury ought not to find a fraudulent intent on the part of these defendants for falling in with that general custom of people not appearing before the notaries.

"The COURT: I do not think the custom could, in the slightest degree, affect the *custom* of whether it was fraudulent or not. That is fixed by law. A paper that is not signed by a person who appeared before a notary and swore to it is not a legal paper.

"Mr. BIRNEY: That may be, and yet it affects the fraudulent purpose of the individual.

"The COURT: Not a particle. Where the fraudulent purpose is in question under the indictment, it has not a particle of effect.

"Mr. WORTHINGTON: Will your Honor let us have an exception to that?

"Mr. BIRNEY: The fact I intended to suggest is that fraudulent intent is a matter of mind and a matter of purpose.

"The COURT: I have said you need not argue it. It has not got anything to do with this case.

"Mr. BIRNEY: It is not one of the matters charged in the indictment.

"Mr. BAKER: I object to that statement.

"The COURT: I did not understand you.

"Mr. BIRNEY: I am mistaken. It is a matter that is charged.

"The COURT: I say that what the parties thought about the law would not make a particle of difference.

"Mr. BIRNEY: I am not speaking about the parties here, and have not been. I am speaking about the applicants.

"The COURT: It is not a question here whether they thought they needed to appear before a notary or not. If they did not appear before him——

"Mr. BIRNEY: Those people are not on trial of course.

"The COURT: But the question of whether the applications were made in good faith is on trial.

"Mr. BIRNEY: Surely.

"The COURT: And that is what I supposed you were discussing.

"Mr. BIRNEY: That deals with the defendants and their purposes, if your Honor please.

"The COURT: What does.

1456 Mr. BIRNEY: I was referring to the applicants, and not to the defendants. I was referring to the persons who had made



applications for State Lands through these notaries who were upon the stand.

"The COURT: I say the good faith of the applicants is at issue under the indictment; and that if applications were not made in good faith in the respects charged in the indictment, they are implicated. That is one of the points the Government had to make out."

To which ruling of the Court the defendants and each of them duly excepted.

Thereupon Mr. A. S. Worthington, of counsel for the defendant, Hyde, argued the case to the jury, and in the course of his argument the following occurred:

"Now, another thing. I want to refer to the situation of the witnesses by whom the Government, in large and general has been making out its case, and to the character of those witnesses, according to the Government's theory of the case.

"Gentlemen, nine witnesses out of ten who came upon this stand, it was apparent from what took place in this court-room came here in chains. They were not free agents. Our forefathers, shortly after the Constitution of the United States was adopted, were so much afraid that the Government would become a Government which would exercise the same tyranny that had been exercised over the colonies by the Parliament of England, that they took pains to amend that Constitution, and one of the amendments that they put into it was that no man should be put up on trial in any court of the United States, on a criminal charge, upon evidence except that which should confront him on the witness stand. You may take depositions in civil cases, pending in these other courts. The defendant has the privilege, under the statute in force here, with the permission of the Court, of taking depositions away from the place of trial; but the Government must put upon the stand the witnesses who are to testify, and they must be subject to cross-examination by counsel for the defendant. Of that constitutional right we have been substantially deprived. It has been taken away from us by what has taken place here. Witness after witness has been brought here, before some representative of the Government, and in the absence of the defendants and of their counsel, and he has taken down in writing or in typewriting their statements, and an officer of the law authorized to administer an oath, has sworn them to those statements; and every witness, almost, who came upon the stand from Oregon or California, just before he was put upon the stand, and in many cases upon the morning before he took the stand, was shown that affidavit; and if, when he got upon the stand, he undertook to depart from what he had sworn to, then the Government was here in an uproar, and was asking him whether he had not testified so and so, and whether it was not true.

"Mr. BAKER: I object to this argument unless it is made for the purpose of impeaching the witnesses when they took the stand.

"Mr. WORTHINGTON: That is just what I am going to do, and if you will wait a moment I will show you how I am going to do it.

1458 "The COURT: The statement was not a proper statement as it was made, but it may not have been intentional. When counsel says that the defendants have been deprived of their constitutional rights that is an impeachment of the court.

"Mr. WORTHINGTON: I mean in substance and effect.

"The COURT: That is the same thing. It is a distinction without a difference. When you say that, you say the Court has ruled contrary to the Constitution of the United States.

"Mr. WORTHINGTON: I take that back. I do not mean of course, to assume the functions of the Court, and to tell you that the constitutional law of the United States has been violated, but I say that the effect of what has taken place has been practically to deprive us of any of the benefit of that provision.

"The COURT: That is the same thing. You do not change it a particle, and I hold that it is improper argument."

To this ruling of the Court, counsel for the defendants and each of them duly excepted.

At the conclusion of the arguments of counsel the Court instructed the jury as follows:

"The COURT: Gentlemen of the jury: You have listened for four days now to the argument of counsel on the questions of fact involved in this case. You have noticed throughout the argument that the counsel have felt the inadequacy of the time allowed them in which to discuss the issues; and yet they all realized, as the Court did, that the trial had extended to such length that they ought to confine their remarks to the time allotted; and all very considerably agreed to that division of the time.

1459 "It is the duty of the Court to explain to you as well as it can the law which is applicable to this case; and it is your province to take the law as given you and decide all the questions of fact. In all English speaking countries where the jury trial prevails it is the duty of the jury to decide the questions of fact by themselves. That is their exclusive province, and it is their duty. They cannot shift it upon anybody else. In some jurisdictions it is the practice for the court to express its opinion upon questions of fact, and give the jury the benefit of its advice upon such matters. But that is not the practice in this jurisdiction. Parties are better satisfied if the jury are left to determine those questions without any suggestions from the court as to what impressions the evidence may have made upon the court. So that you must not expect from me in the course of this discussion, any suggestion whatever as to what I may think about any question of fact. The whole responsibility for the decision of those questions rests with you; and personally I assure you I have no wish to share your responsibility.

"This is a very long indictment, as printed in the volume here upon one side only of the pages. You can see something of the length of it. The indictment itself as it was filed in Court will go with you to your jury-room, the type-written form of it; and as counsel told you as a matter of convenience the printed form which

I hold in my hand will also go with you for more convenient reference.

I wish to say a word in regard to the length of the indictment. It is in the interest of defendants, not of the Government, that 1460 indictments are required to be full and exact. This is what leads to such voluminousness as you see in the present indictment. If it were less full and explicit and detailed, the defendants might have a good objection thereto on the ground that they had not been sufficiently apprised of the charge against them. Consequently you are not to harbor any prejudice or feel any impatience by reason of the length and fullness of the indictment.

It is of the utmost importance, as has been urged upon you repeatedly during the course of the trial, that you should observe exactly what the charge is. It is one of the most priceless blessings of liberty, handed down to us from our fathers, that when we are brought into court to answer a charge the charge shall be specific, that we may know before we come to Court what it is that we must meet and answer. This indictment was found and presented by the Grand Jury under a section of the revised Statutes of the United States, which omitting a few unimportant words, or words which have no reference to the present case, I now read to you:

"If two or more persons conspire to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years, or to both fine and imprisonment, in the discretion of the Court."

It is under that section as I said, that this indictment has been found. The indictment itself is so long (and necessarily so, as I said) and so involved, that I have paraphrased it for you, and will read to you a statement of what I consider to be the essential 1461 parts of it, in language which perhaps you will understand rather more readily than by reading the indictment itself. I shall call your attention to some omissions from the indictment, and explain why I leave them out.

The first paragraph of the indictment is like the dramatic personae at the beginning of a play. It sets forth the names of the various characters who are alleged to have taken part, and gives a description of them. It says that Hyde and Benson were each engaged in the business of getting title to public lands of the United States outside of forest reserves in exchange for school-lands lying within such reserves; that they were carrying on that business in San Francisco; that Dimond was the employé, agent, and attorney for hire of Hyde and Benson in that business; that Schneider was an agent and employé for hire of Hyde and Benson in the same business; that Harlan and Valk were employés of the United States holding official positions in the General Land Office here in Washington receiving fixed salaries and charged with duties pertaining to the disposal of the public lands, and especially to such exchanging of lands; that Allen and Taggart were employés of the United

States in the public service the former as a forest superintendent, the latter as a forest supervisor.

The indictment then charges that the four defendants, at a time and place named, which I shall refer to later, did unlawfully conspire, combine, confederate and agree together, knowingly, wickedly, and corruptly, to defraud the United States out of the possession and use of and the title to divers large tracts of its public lands which were open and to be open to selection under its laws in lieu of lands

included and to be included within the limits of forest reserves established and to be established in the States of California and Oregon, by obtaining and appropriating from the United States such possession, use and title, for their own profit and benefit, as afterwards set forth.

By the alleged plan Hyde and Benson were to obtain fraudulently from the States of California and Oregon title to and possession of school lands lying within the limits of such reserves. These school lands, it is alleged, were open to purchase from those States by residents thereof, respectively, who were citizens of the United States, or had declared their intention to become such, under the laws of such States, in quantities not exceeding, for each resident, 640 acres in the State of California and 320 acres in the State of Oregon, upon application made to the proper authorities by such resident, supported by his affidavit showing his qualifications and amongst other things, showing his intention to purchase such lands in good faith and for his own benefit, and that he had made no contract or agreement to sell the same; which said school lands, it is alleged, were to be so obtained from the States by making and filing with the said authorities applications and assignments of the same, and of the certificates of purchase thereof, in the names of persons not really desiring and not qualified to purchase.

It is alleged that Hyde and Benson were to procure the use of the names of such applicants by paying to them small sums of money, and by falsely representing to some of them that they were merely disposing of their rights to purchase such school lands, and further

by supporting such applications with fraudulent affidavits and affidavits that were false, and that were known to Hyde and Benson to be false, in that they would purport to be bona fide affidavits sworn to by the persons whose names were signed thereto, whereas in fact they would not be bona fide or sworn affidavits, because in the first place they would state that the affiants were persons qualified under the laws of the State as intending to purchase in good faith and for their own benefit, and as having made no contract or agreement to sell, while in fact they would not intend to purchase in good faith or for their own benefit at all, but would be knowingly aiding Hyde and Benson in their said fraudulent practice, or else innocently acting upon their said false representations; and because in the next place, the affidavits would not in fact ever have been sworn to at all by the persons whose names were signed thereto.

It is alleged that as a part of said plan Hyde and Benson were to procure such persons to make relinquishments, assignments, trans-

fers and conveyances, either directly, or indirectly through Hyde or the agents of Hyde and Benson, as should be found convenient to the United States, of the titles to and possession of such school lands so obtained, in exchange as aforesaid for public lands to be selected, and for titles thereto by patent to be obtained, by and on behalf of Hyde and Benson, in the names of Hyde or others whose names are given in the indictment as should be found convenient. It is also alleged to have been a part of said plan that Hyde and Benson should in like manner exchange such school lands theretofore in

the same fraudulent manner obtained by them from said  
 1464 States for said public lands of the United States, they (Hyde and Benson) at the time of so relinquishing the titles to said school lands to the United States well knowing them to have been thus fraudulently obtained, and to be false, fraudulent, void and worthless, and intending thereby, and by afterwards disposing of such lands and titles to the general public, to defraud the United States out of the possession and use of and the title to said public lands.

All down to that point, gentlemen, deserves most careful consideration, because practically all of that is essential as I shall explain to you afterwards. I wish you to keep that carefully in mind.

Now follow two portions of the charge contained in the indictment which I shall charge you later are not essential to a verdict against the defendants; but I read them because they are a part of the indictment, and there has been evidence introduced tending to support them.

It is alleged as a part of said plan that Hyde and Benson, during the period in question, were to procure, and take advantage of the fact that they had theretofore procured, Harlan and Valk, by paying them money, corruptly to furnish to them information concerning the status in the General Land Office of all matters pertaining to their said business, and especially to their selections of public lands based upon their said fraudulent titles to State lands, and to expedite, contrary to their official duty, the matters which should be pending in said office pertaining to said business, by securing approval of their selections in advance of the time, when, in due course, they would be approved, and otherwise favoring and assisting them in  
 1465 their business and fraudulent practice in every way in their power; and that Hyde and Benson were in like manner to procure Harlan and Valk corruptly to furnish them information concerning any discovery or investigation of their said fraudulent practice, to the end that they might be enabled to defeat its object.

It was also part of the alleged plan that Hyde and Benson, during the period in question, were to procure, and take advantage of the fact that they had theretofore procured, Allen and Taggart, by paying them money and other valuable considerations for that purpose, corruptly and contrary to their duty to furnish them all information gathered by them in their official capacity, and allow Hyde and Benson to make for them and in their names several of their official reports and recommendations concerning the character and condition of public lands, and in favor of including or not including such

lands within forest reserves as should be to the interest of Hyde and Benson, and to transmit such reports and recommendations to the superior officers of Allen and Taggart, notwithstanding it was the duty of Allen and Taggart, as such officers, under the laws of the United States, and the rules, regulations, and instructions of the Department of the Interior, to furnish only to their superior officers such information, and to thus transmit to their superior officers the reports and recommendations aforesaid, giving such superior officers their own independent advice concerning the advisability of including or not including such lands, it being alleged that it was a part of the conspiracy between the four defendants to secure by the foregoing means the establishment of forest reserves in such localities in California and in Oregon as would best effect the object of the conspiracy by reason of containing undisposed of school lands still open to purchase from said States.

Those are the two paragraphs to which I referred to in what I just said.

It is further alleged to have been a part of the plan that Dimond, as attorney for Hyde and Benson, was to aid them in their said business by appearing in their behalf before the proper officers of the Land Office here and urging speedy action, and otherwise furthering said business in divers ways afterwards set forth; he, Dimond, when he was aiding them, well knowing the fraudulent character of that business, and that his said acts were done in pursuance of and to effect the object of the said conspiracy. It is further alleged to have been a part of said plan that Schneider, as the hired employee of Hyde and Benson, was to aid them in obtaining from California and Oregon the fraudulent and worthless titles to the school lands in the manner aforesaid by negotiating in their behalf with persons willing to sell and allow the use of their names for the purpose of making such applications and affidavits in support thereof, and for conveying said school lands to the United States, and also by making to other persons the false representations aforesaid as to the character and effect of the documents to be signed by them, and so procuring the use of their names, he, Schneider, when so aiding them, well knowing the fraudulent character of such papers, and that they were made for the purposes aforesaid.

The foregoing is an outline of the first count of the indictment, except as to that part which charges the overt act. In that part it is alleged that in pursuance of the conspiracy, and to effect its object as to certain tracts of the public lands of the United States therein particularly described, the description of which I will not repeat, and to procure the same in exchange for certain school lands therein particularly described which had been procured by Hyde and Benson by the fraudulent practice aforesaid, the defendant Dimond, on the 30th day of December, 1901, here at Washington, unlawfully presented to the Commissioner of the Land Office, a certain letter therein set forth (that is, in the indictment), directing his appearance to be entered and requesting notice of action; he, Dimond, well knowing that it was presented in pursuance and to effect the object of the conspiracy.

The second count of the indictment alleges that the four defendants conspired together as set forth in the first count, and that in pursuance and to effect the object of the conspiracy the defendant Dimond presented to said Commissioner the three letters therein set forth, in aid of No. 951 of the forest-land selections, the base-land and the selected land being particularly described in said count.

Each subsequent count of the indictment refers to the first count for the purpose of setting forth the conspiracy charged, without repeating it at length, and then proceeds to state some overt act or acts in pursuance of it.

Overt acts of the defendant Dimond are set forth in counts 1468 3, 4, 5, 6, 7, 8, 9, 10, 12, 11, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, and 34.

Counts 29 and 33 have been abandoned by the Government, and upon these the defendants are entitled to an acquittal, and you should render thereon a verdict of "Not Guilty". I will put on this printed copy which goes to you those two numbers, 29 and 33. Those are the two counts upon which they must be acquitted.

Count 15 sets forth an overt act by the defendant Hyde in taking an appeal to the Secretary from a decision of the Commissioner and stating the grounds of said appeal.

Count 22 sets forth overt acts of Dimond and an overt act of Hyde.

These various overt acts of Dimond and Hyde set forth in these counts are formal acts in connection with the selection cases pending in the Land Office here. These are acts which, considered in and of themselves, are innocent; but if they were acts done in furtherance of the conspiracy, and to effect its object, they have the same effect in law as if they were in themselves unlawful acts. In other words, an act need not be unlawful in itself in order to be an overt act in an unlawful conspiracy.

Counts 35, 36, 37, 38, 39, and 40 set forth as overt acts the payment by Benson to Harlan of various sums of money.

Counts 41 and 42 set forth as overt acts the payment by Benson to Valk of various sums of money.

You will have the indictment before you, as I said, and for the sake of more convenient reference a printed copy thereof, to which  
1469 you can refer for a more particular statement of the matters which I have stated somewhat generally in this review. You will find therein the particular description of each of the tracts of land to which the overt act charged in any given count specially related.

As to each defendant, you will remember it to be true that some evidence has been introduced against him that was not admitted as against the others. For this reason it is possible that there may be a verdict against one only of the defendants, although in fact he could not be guilty alone. You see, that necessarily results, because one is to be tried on the evidence which was admitted against him. As to most of the evidence, it was admitted as against all; but there was some evidence—for instance, the alleged confessions of Schneider—which was admitted as against him only. Now, if the evidence which was admitted as against Schneider was sufficient to satisfy you

that he did conspire with the other defendants, or some of them, as the Court shall charge you you may find, then you might convict him, although, when you came to take the evidence against other defendants, and to consider only what was admitted against them, you might not find sufficient evidence that had been admitted against them to convict them. The same would be true as to Dimond, as to whom a good deal of evidence was admitted that was not received as against the other defendants. And I think it is true of each of the defendants, that some evidence has been introduced as against that defendant only.

So that it is true, as I stated in a proposition for the benefit of counsel, that there may be a verdict against any of the defendants, whether one or more, as to whom the evidence admitted, received against him or them, proves that he or they conspired as charged, provided any overt act is also proved as charged.

As I stated to you before, each count of the indictment charges the same conspiracy, and, in addition thereto, one or more overt acts alleged to have been done in pursuance of it. So that, stated in one way, these counts subsequent to the first count contain nothing new except the overt acts; and when you take those up one by one, the question is, if you have found the conspiracy in the first place, whether the overt acts charged were committed. If you do not find the conspiracy, of course the overt acts cannot be found.

There is another essential point to which I will call your attention right now, and that is this: Of course you will first determine whether the conspiracy is proved, and then you will judge of the alleged overt act by the conspiracy as you find it. That is, an overt act must be one in pursuance of the conspiracy, and one in furtherance of it. Now, whether a certain act was in furtherance of the conspiracy and in pursuance of it might depend entirely on what the conspiracy was, as to whether the conspiracy did embrace certain matters. I shall call your attention to that more particularly later.

The charge is that the conspiracy was a general one so far as concerned the description of the lands so to be procured from the United States, as well as the description of the lands bogus titles to which were to be so transferred to the United States. The description of said lands of the United States in the indictment is,

"divers large tracts of the public lands of the United States open and to be open to selection under the laws of the United States in lieu of lands included and to be included within the limits of forest reserves established and to be established within the States of California and Oregon". The description of said lands bogus titles to which were to be transferred to the United States is "school lands lying within the limits of such forest reserves and open to purchase from those States by residents thereof, respectively, under the laws thereof."

There cannot be a conviction unless it is found that there was such a general conspiracy. If there was a conspiracy, but the conspiracy was only to procure certain definitely described tracts of land of the United States, or to procure lands of the United States by transferring



to the United States bogus titles to certain definitely described tracts of school lands, it was a different conspiracy from that alleged, and will not support a conviction under this indictment.

The first question is, Did the defendants conspire at all? The second question is, whether they conspired to accomplish the end alleged. The third question is, whether they conspired to accomplish that end by the fraudulent means alleged so far as the indictment in that respect is necessary to be proved, referring to what has been already stated in that regard. The fourth question is, under each count, whether the overt act therein mentioned has been proved.

Two other important questions must be determined in connection with the foregoing: One relating to the place, the other to the time. The conspiracy must have existed in the District of Columbia, and it must have existed and some overt act in pursuance of it must have been committed within three years next before the filing of the indictment. I shall state more fully in regard to those propositions later.

A conspiracy, in its briefest definition, is a corrupt combination to do something which is against the law. The law of conspiracy is based on the great principle of agency, that what one does through another is the same as what one does by himself. When men agree together to do a specified thing, one to do one part, another another part, and so on, each one makes all the others his agents to do the things contemplated by the agreement. Consequently, when any one of them does any of those things, it is the same as if all had been present and taking part in doing it. If the defendants agreed together to defraud the United States out of the lands described in the general words of the indictment, and to do it by the fraudulent means there stated, and to accomplish their said purpose by doing or having done here in the District of Columbia any of the things alleged in the indictment as to be done here, and any of such things were done here pursuant to said agreement, then it is the same as if they had all been here and actually engaged in the doing of them. As far as such acts are concerned, they are to be treated as having been performed here by the defendants in person; and, moreover, such acts are characterized by the purpose for which they were performed. Being performed, as we are now supposing for the

moment that they were, for the purpose of carrying out the said agreement of the defendants, said agreement itself is contained in the acts, and the conspiracy is here just as truly as if the defendants were all here in person, doing those things with the common mind and purpose which contemplated them. In such circumstances the defendants would be conspiring together in the doing of each act because each act would have reference to the conspiracy. It would not be necessary that they should put their heads together and go over the terms of the conspiracy every time an act was done in furtherance of it. It would be enough that the act was an expression of their common understanding.

The same principle of agency is to be applied to the question of time. If Schneider was a member of the conspiracy back of the three-year period, and it was a part of that conspiracy that acts

mentioned in the indictment should be done in furtherance of the conspiracy from time to time thereafter as occasion might require through a series of years until the object of the conspiracy should have been accomplished, although he himself was not to do and did not do anything within the three-year period, and if after doing his part he remained acquiescent expecting and understanding that said further acts would be performed by the other members of the conspiracy, and did nothing to repudiate it or withdraw from it, the acts of the other members of the conspiracy in furtherance of it would be his acts, and would have the same effect against him as if he had done them himself. He would still be acting through his colleagues. He might be playing his part by keeping still as much as he did formerly by acting. If these titles were fraudulent 1474 as alleged and he assisted in procuring them for the purpose of having them used thereafter by other members of the conspiracy in effecting the fraudulent exchange alleged in the indictment, he was setting in motion a force which took him along with it, as long as he continued acquiescent and those things were being done which he had contemplated and agreed should be done.

As has been said to you in the argument, a conspiracy is a kind of partnership—a partnership for an unlawful purpose. As in a partnership for lawful business, each one, while acting within the scope of the partnership agreement, is acting for all the partners. The rule is, all for each, and each for all. But there are some distinctions between this conspiracy partnership and the lawful partnership in business. For instance, the partnership in business usually implies that the profits are to be divided as profits between the members. But if the conspiracy existed in other respects, the fact that Schneider and Dimond were salaried men, instead of receiving a share of the profits as such, would not prevent their being partners in the criminal conspiracy. By way of illustration I might mention another difference. In a business partnership, if one of the partners should drop out, by death or otherwise, the whole partnership is dissolved. But in a conspiracy, one might drop out and the conspiracy might remain alive as to the others.

It is of the utmost importance, as you will see from what I have already said, to ascertain exactly what is the scope of the agreement. Here it is alleged that the agreement embraced both an end to be accomplished which was unlawful, and means to be used in 1475 accomplishing it which were unlawful. The object, as it is claimed, was to get the United States lands in exchange for worthless titles to the State lands—titles which the defendants knew to be worthless. The means were, as it is claimed, various; and they are particularly set forth in the indictment.

Ordinarily the law does not permit proof to be given of what A has done in order to affect B. A can only be affected by what A has done, and B by what B has done. And when the case comes to be finally considered, that is as true in a conspiracy case as in any other. What A has done cannot be evidence against B, unless it was found that A was acting with B's authority. But when the things which A and B have been doing separately and apart from each other can only be explained on the theory that they

were acting in pursuance of a plan which they had previously adopted, it may be found that they had previously adopted the plan from the evidence afforded by such acts—both the acts of A and the acts of B.

One question, therefore, is whether the acts of these various defendants, when considered in their relations to one another, do indicate clearly and convincingly that the defendants were acting in pursuance of a common plan and purpose which was understood by and between themselves, and whether that plan and purpose was the one charged in the indictment. Do their acts so fit together and match each other that the only reasonable explanation of them is that the actors were performing each his allotted part in a preconceived and prearranged plot or play? That is the test.

1476 I wish to use as an illustration here a passage from a historic speech made by Abraham Lincoln at Springfield, Illinois, on the 17th of June 1858—that speech known in history as the “house divided against itself speech” in which he was arguing that there was a conspiracy between the leaders of the slave power to foist their policy upon the United States. I use this merely as an illustration; and I think you will not be misled by it in view of what I shall say afterwards.

Mr. Lincoln said:

“We cannot absolutely know that all these exact adaptations are the result of preconcert. But when we see a lot of framed timbers, different portions of which we know have been gotten out at different times and places, and by different workmen—Stephen, Franklin, Roger and James, for instance—and when we see these timbers joined together, and see they exactly make the frame of a house or a mill, all the tenons and mortises exactly fitting, and all the lengths and proportions of the different pieces exactly adapted to their respective places, and not a piece too many or too few—or, if a single piece be lacking, we see the place in the frame exactly fitted and prepared yet to bring such piece in—in such a case, we find it impossible not to believe that Stephen and Franklin and Roger and James all understood one another from the beginning, and all worked upon a common plan or draft drawn up before the first blow was struck.”

That is the theory upon which the law permits separate facts to be introduced, separate acts of alleged conspirators, in order  
1477 that when all have been introduced you may say whether they do so fit together and match each other that they show that the doers of them must have understood each other in what they were doing, and must have been acting in pursuance of a common plan and purpose.

This is a case of circumstantial evidence; and that means that the fact which you must come to if you finally find the defendants guilty is the result of an inference. You are to infer, if you find them guilty, that they had this common mind and purpose, from the circumstances which you find in the case. It is sometimes said that you should not convict one on inferences; but when you consider the matter, that is always true,—that if one is convicted, he

is convicted on an inference. Suppose a witness takes the stand and testifies to you that he saw a certain act done; You do not see it done. If you believe him you infer that it was done because he says it was done, and tells you so under oath. That is an inference. You did not have the first knowledge of it.

Circumstantial evidence is a step farther off than that. Nobody has testified to ever having heard these defendants get together and arrange this matter. That would be direct, positive evidence; but you would have then to be convinced that the witnesses were telling you the truth, and knew what they were telling you, and were honest about it.

It is true of all law cases that inferences must be drawn; and the question is whether it is reasonable to draw them; and in criminal cases the question is whether inferences must necessarily be drawn in order to find any reasonable explanation of the facts.

1478 Suppose it were claimed that a pitcher had been lost; it was of a certain pattern, a certain size, a certain color, and it had the owner's name across it; and there were found various fragments which were claimed to be fragments of that pitcher; You would examine them with reference to their color with reference to the design, with reference to their size, and then you would see whether they fitted together, and particularly whether you could find any of the letters of the name of the owner which were wrought into it. You might perhaps find the handle; you might find various pieces that fitted together, and then might be unable to find other parts. You would infer, perhaps, if you found enough of these which fitted together, the existence of the whole pitcher from the parts which you did find; and you might find enough of the name to satisfy you, by way of inference, that it was the pitcher belonging to the individual alleged. It would be all a matter of inference, and yet you might be completely satisfied of the truth of the matter of fact claimed.

When you take all the pieces of evidence in this case, do they fit together in that way? and are they of the same color and of the same design? and do they show that there was this conspiracy which was charged here in the indictment? That is the question which you will have finally to decide upon that part of the case.

It is not necessary that all the defendants should have been in the plot at the beginning, nor that all should remain in it to the very close. One may come into a conspiracy after it has been

1479 organized and set on foot, and even after a good part of the work contemplated has been performed. If he does come into it, knowing what it is, and what has been done, he adopts and ratifies what his co-conspirators have previously done. It is then as if he had been in it from the beginning. You will see the application of that to this case; and I shall refer to it again. So, too, if one drops out of a conspiracy, he remains liable for what was done while he constituted a part of it; and he may continue to be in the conspiracy and to be bound by the acts of his co-con-

spirators in furtherance of it even after he had ceased to act in it himself, if he has not in fact withdrawn from it.

As bearing on this last statement, you will consider what is said in another part of the instructions touching the statutes of limitations.

Although the fraudulent and corrupt combination, the common design, is the essential element, it is not necessary to prove that the defendants came together and actually agreed in terms to have this common design, and to pursue it by common means, and so carry it into execution. Such proof can seldom be made and therefore is not required. It is sufficient to justify the jury in finding a conspiracy if it is shown that the persons charged with conspiring pursued by their acts the same object, often by the same means, one performing one part of an act and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, provided such evidence satisfies the jury beyond a reasonable doubt of the existence of the conspiracy.

1480 As I told you I left out of the paraphrase of this indictment a certain part of it. You have heard allusions to it very often in the argument. That was the part which charged that it was a part of the unlawful conspiracy that names should be forged. I use that term as applying both to fictitious persons and to forging the names of real persons.

There was evidence in the case tending to show that there were forged names used; and as to some of the defendants, if the case had stood against them alone, I should have submitted it to you to find whether that was a part of the conspiracy. But after a very careful examination of the record, and hearing the counsel discuss the matter, I was satisfied that there was not evidence tending to show that the defendant Benson knew of the use of forged names, or that he could have found out by examining the papers themselves, that he would have found out even if he had examined them; and inasmuch as the Government desired to submit the case to the jury as against all the defendants that matter is to be left out. So that you are not to treat that as a part of the charge here as to the conspiracy.

Now I wish to speak to you as to what defects would make the titles invalid, and what knowledge the alleged conspirators must have had of their existence. The alleged defects in the titles to said school lands are particularly described in the indictment, and such titles must be proved to have been defective in some at least of the particulars there described; and it is by reason of such defects only that they can be found to have been invalid. These defects are:

1481 First: That the applications were made by persons who had no desire to purchase for themselves, but were acting merely for Benson or Hyde in so doing.

Second: That the affidavits were false to the knowledge of the defendants, in that they stated that the applicants were qualified to purchase and intended to purchase for their own benefit, and had

made no agreement to sell or dispose of the lands when they made the applications, whereas in fact the contrary was true.

Third: That in some cases they were not sworn to at all; that the parties whose names were signed to the affidavits never went before a notary or made any oath in fact.

I think it will be best for me now to take the indictment, or this paraphrase of it, and go through that part of it, and call your attention to the alleged defects, and ask you to recall the evidence upon those subjects.

There is in this indictment a statement of what it is claimed the laws of Oregon and California were. It is stated briefly in my transcript in these words:

"These lands, it is alleged, were open to purchase from those States by residents thereof, respectively, who were citizens of the United States, or had declared their intention to become such, under the laws of such states, in quantities not exceeding, for each resident, 640 acres in the State of California, and 320 acres in the State of Oregon, upon application made to the proper authorities by such resident, supported by his affidavit, showing his qualifications, and amongst other things, his intention to purchase such lands in 1482 good faith and for his own benefit, and that he had made no contract or agreement to sell the same."

I charge you that that is a true statement of the laws of those States. The laws of those States did require those things.

Then it charges that those school lands were to be so obtained from the States by making and filing with the authorities applications, and assignments of the same, and of the certificates of purchase thereof, in the names of persons not really desiring and not qualified to purchase.

You have heard a great mass of testimony bearing upon the question how the titles were obtained. It would not make any difference how they were in fact obtained unless you should find, from considering how they were in fact obtained and all the other evidence in the case, that that was a part of the plan that they should be so obtained, or unless you should find that it was a part of the plan that titles which the defendants knew had been so obtained should be foisted off on the Government in the way alleged. But all that evidence deserves your very careful consideration. How were these titles in fact obtained? Did the applicants who did make application for them really apply for them for their own use and benefit alone; or were they applying for them because they were hired to do so by Hyde and Benson or either of them, either directly or through Schneider or anybody else? And when they made the application, did they have that understanding with the defendant Hyde or Benson or their agents, that they should turn them over to them?

1483 If that was the situation, then the titles as to the applicants, and as to those who had notice of how they were acquired, were fraudulent as against the States. The State had said, "We will grant these lands only to those who apply for them for themselves, and not to anybody who applies for them to turn them

right over to somebody else having an agreement with those other persons to turn them over, so that they are merely acting as tools or figureheads." That was the State statute. The State said, "We will not grant titles in that way; and if anyone undertakes to get titles in that way, they shall be invalid." And if that is the way they were obtained, they were invalid.

Then too, the law of the State required that the affidavit in support of the applications should be actually sworn to. Now, how were these titles obtained in that respect? Were the affidavits in fact sworn to? Did the applicants go before the notaries and swear to them? A notary could not affix his seal and put on his jurat when the party did not appear before him and had not in fact sworn to anything before him and have that have any effect so far as the parties who knew about the transaction were concerned. That is a mere mockery. It does not make any difference how universal the custom may have been, except that if it was universal it may tend to show that those were the means employed. But the custom could not change the law of the State or the law of the United States in that regard.

But, as I said in regard to the other matter, you are to inquire how the fact was in regard to this matter, as to whether the parties did in fact appear before the notary and swear to these things as bearing on the question of whether it was a part of the conspiracy between these parties that they should be so obtained, or that titles which had been so obtained should be used in the manner described.

You see at once that if a man put his name to an affidavit and did not in fact swear to it, and somebody else took it to a magistrate, and the magistrate put on his seal and certificate and signed it, that man would not be liable for perjury no matter how false the affidavit might have been. He never had been sworn to it. Suppose he had been prosecuted for perjury—he could come into court and say: "I never swore to this thing" and that would have been a perfect defense to him. And the State had absolutely no assurance that the matters were as set forth in the affidavit if that is the way it was done. That was a cheat and a fraud upon the State, as palpable as any cheat or fraud could possibly be. Men who employed it were swindlers. It is not possible to gloss the matter over. It was dishonest. It was as dishonest as anything could be if that is the way it was done in fact. And if that was a part of the scheme that titles should be obtained in that way, or that titles which had been obtained in that way and which they knew had been obtained in that way should be passed off on the United States as good titles, then it was a fraud, and it was such a fraud as is charged here.

But what is the matter of fact about it? What is the very truth about the matter? Were these means employed by Hyde himself, and employed by Benson, and were they perfectly understood between them; or were they ignorant of the fact, if you find the fact to be so that such means were employed in getting the titles they were using.

On that question of knowledge, this indictment alleges in

explicit terms that these defendants knew that these titles were invalid in the respects alleged, viz: That the parties were not bona fide applicants for the reasons stated, and that they had not really made oath as the papers purported to show that they had made oath. Now, that must be proved. It must be proved that the defendants knew how that thing was, or else that they did not know practically because they did not want to know. It must appear from all the circumstances in the case, at least, that they had good reason to suspect and did suspect that the titles had been so acquired, and it must appear that the circumstances were such that any honest and reasonable man taking up those titles to use would have been suspicious and would have inquired; and the fact must appear to be such that if they had inquired in the natural and reasonable way they would have found out about it.

To speak concretely (not as covering the whole case, but as illustrating) take the case of Benson, and whether he knew that the titles procured in Oregon were procured (if they were procured) in this fraudulent manner. You must first find that they were procured in that manner before you can go any further. But I am assuming now for the moment that you find that they were procured in that manner. Did he have notice or knowledge of it? You must take all the circumstances of the case into consideration. Here is the contract before you which was entered into between him and Mr. Hyde relating to those Oregon titles. There was the length of time they had been talking about it. There was the proximity of their offices to each other. There was their familiarity with the business in hand. There was the fact that this contract provided in terms that all the Oregon Titles which Mr. Hyde had procured or was to procure should be sold by Mr. Benson or should be included within this contract so that he must have had some knowledge as to how many there were; and you might infer, I should think, that he saw, during the course of the negotiations, or during the pendency of the contract, the papers themselves. If he was making a contract that related to thousands and thousands of acres, and thousands and thousands of dollars worth of property, and had that interest in it, it would not be strange if he saw such papers as there were, the abstracts of title, and knew where the lands were. He had been engaged in the business; and evidence has been introduced before you as to how it was carried on on his part so far as notaries were concerned, in having them actually sworn to or not. That is a question of fact for you.

When you take all the circumstances together, are you satisfied from the evidence that he knew how this vast mass of titles, covering this great acreage which Mr. Hyde had just acquired in Oregon or was just about to acquire, and which were just beginning to come down to the office from Schneider, had been acquired, and that they had been acquired through the use of dummies in the way I have just stated? Or if he did not know it, do you think, as honest and reasonable men sitting on that jury, that the circumstances were such that if he had been honest and reasonable in the position in which he was placed he would have inquired about it,



and, if he had inquired would have found out the true facts  
 1487 about it—would have asked Mr. Hyde how he got them, and  
 if he had been told that Schneider got them, would have  
 asked Schneider how he got them, and what the circumstances were,  
 if he had been honest and reasonable?

That is the test. A man cannot shut his eyes to the truth and then say he did not know. But if he, Benson, was acting in good faith in the matter, if he did not know that there was anything wrong about these titles, that they had been procured in the unlawful way charged (if, in fact, they had been so procured), and there was nothing in the circumstances to make him suspect in the way I have stated, but he acted honestly and in good faith in the matter, then so far as that branch of the case is concerned, he cannot be convicted.

The same would be true of Mr. Hyde; and the same is true of all the defendants who had not either this actual or this imputed knowledge as to how the titles had been procured.

One of the requests for an instruction presented by the defendants was to this effect (I presume I shall read it before I finish): That Hyde and Benson, or either of them or anybody else, could have gone up into the State of Oregon, or sent up there, and let it be known that he would buy these titles after they had been procured by any applicants; and if the applicants saw that, or knew that, and went and applied for the lands honestly and in good faith, thinking they would have a good chance, perhaps to trade with Mr. Hyde or Mr. Benson, or somebody else afterwards, even if they did not intend to use the lands themselves, that would have been honest;

and I charge you so. But you are to distinguish between  
 1488 that case and a case where the applicants, when they made the applications, were making them for Hyde and Benson or either of them, and had that understanding at the time with Hyde and Benson or one or either of them or their agents, that they were doing it for them, and would pass the lands over just as they might be asked to do. That is the difference. In one case a man would see an advertisement and say: "Well, I think it would be a good thing, and I will make this application, and if I want to I will sell it; if I don't I will not"; and in the other case he is a mere fool, a mere figurehead or dummy, and he is acting for the other party, and understands from the beginning that he is.

There is another phase of this indictment as to that matter of knowledge and that matter of procuring titles in that way. It is alleged that it was understood and arranged between these parties that they should not only go out and get these titles in this way, but that titles which had been previously acquired in that way should be used in the unlawful way charged. It does not make any difference which way it was—whether the titles were in the first place procured in that way for that purpose, or whether having been procured in that way, the parties, knowing how they had been procured, agreed together to use them in the way charged.

That is a very essential part of this indictment.

These paragraphs relating to the means that are alleged to have

been understood between them to be used, as to using Harlan and Valk, and using Allen and Taggart—you see, you might leave that all out, and still have this conspiracy complete as to the method of acquiring the titles and the fraudulent use to be made of them. So that if you should not find those matters fully established, but should find all the others, the defendants would be guilty. That is why I made the separation I did in regard to those matters. But if you find that they were in the conspiracy as to those matters also, it strengthens the case, of course; and any evidence which tends to show that they were using those means for that purpose, and had this general scheme as to getting forest reserves for their own benefit, tends so far as it is established, to establish the charge made in the indictment.

I have discussed this matter pretty fully as to Hyde and Benson, and the question of whether they had knowledge of the defective character of the titles, if they were defective. How was it with Schneider? Have you any reasonable doubt as to his having had knowledge as to how the titles were procured which were procured in Oregon? Then the question is whether he understood that that was the general plan. You have heard the evidence as to his connection with Mr. Hyde, the length of his service there, the character of his service, and all the evidence about him; and so far as he is concerned you have a right to use his own statement, if you find that he made it. Have you any reasonable doubt that he understood that these titles were defective, and why they were defective, and what use was to be made of them?

A point has been made in argument about that, that there is not anything in this case from which you can find that he knew these lands were to be used for exchange with the United States for lands outside of forest reserves.

1490 That is a necessary point in the case. You must be satisfied that he did understand about that, that he did understand and consent that that was the use that was to be made of them. You have heard the evidence as to what work he did there in the office, and what familiarity he had with the matter, and the claims on both sides in regard to it.

In regard to Dimond: He came into connection with these parties after these titles were acquired in Oregon. The evidence all tends to show that it was in the summer of 1901. You have heard the evidence as to what he did, how he was employed, what relation he was to sustain to Mr. Hyde, in what way he was to help him as his confidential lawyer, as to Hyde having so many of these cases that he needed legal assistance and thought it would be cheaper to have a lawyer to attend to that business particularly, and how he came into the office there and read up about the matter. Now, how far did he read up, and how far did he inform himself? Did he inform himself as to how these titles had to be acquired under the laws of Oregon and California? Do you think it unreasonable to suppose that he did not? In all the circumstances, are you satisfied that he found out about that—what was necessary in regard to getting these titles from the State, in an office where that business

was being conducted all the while? How much did he know about that?

Did he afterwards if he did not when he first went in there, find out that there was any trouble with these titles? Of course, if there was not any trouble with them I should not need to talk to you further, and if you are in doubt about that the case will come to an end there. But in my further discussion of it I shall have to

1491 assume that you find that there were these defects; and to avoid repetition I will say nothing more about that, but simply assume that you have found it, because it is for you to find. If you do not find it, that is enough.

When did he find out about it? You have had quite a full account here of his services, what he did in Washington and elsewhere, what work he had to do; and then when the suspension order came, you have before you the correspondence between him and Mr. Hyde and between him and Mr. Browne.

Now, I think I am justified in advising you that written evidence, letters for instance written by parties at the time, are entitled to peculiar consideration as evidence.

When a witness takes the stand and says that a man said so and so five or six years ago, he may be mistaken, he may not remember; but when you have in black and white before you the words that were actually used, you are not in doubt any longer about what the words were. That part of it is clear and settled. Then it is only a question of what they meant in the situation as it is disclosed by the evidence.

You take those letters of Dimond to Hyde, and the letters from Hyde to Dimond, as explaining what Dimond wrote back, and what do they show as to whether he did know of the defects or not, at that time when he was writing the letters? And what do they show, if that is necessary to be inquired into, as to his having had any previous knowledge? But suppose he had not any previous knowledge, but acquired it at that time, along during that period when the suspension order first came out, and there was all that excitement about

it. Now, if he found out then, even if that was for the first  
1492 time, that there was this unlawful conspiracy, that these titles were fraudulent, and that they were being used against the Government, and that it was the arrangement between Hyde and Benson to use them, and that somebody, Hyde, Schneider, or somebody else, had acquired them in the way shown, if you find that they were so acquired, and after that, with full knowledge of that, knowing that there was this conspiracy and knowing the purpose of it and the fraudulent character of it, if he kept on after that trying to work these titles through the Land Office here, he made himself a party to the conspiracy, and the effect is exactly the same as if he had been in it from the very beginning.

The fact that he was acting as a lawyer would not protect him. A lawyer has not any license to help a man commit a crime. He may defend him when he is charged with a crime, but he has not any right to assist him in committing a crime.

If he knew all these facts, if he knew that these parties were trying

to commit a crime, trying to defraud the United States, and he took hold and helped as a lawyer, it does not make any difference. It is all the more disgrace to him morally, but it would not make a particle of difference legally.

Now, as bearing on that question you will have to consider another question, and that is whether he did write those anonymous letters. That has been treated in the argument as a very important question, and justly so. You cannot fail to see the importance of that question. There are some of the letters that were typewritten, and there is one that was printed with a pen.

1493 Now, an expert was introduced as a witness here. You heard him testify. You heard him tell what examination he had given to the matter. You heard him tell what led him to the conclusion that he reached, both in regard to the typewritten matter and the pen printed letter, and you heard the opinion which he expressed. Now all that was only advisory. That was to assist you. It is just as if you had had the question to decide in your own business, and had thought that Mr. Shearman knew more about it than you did. You would have said: "Look over these letters and tell me what you really think, and why you think so," then you would have taken his opinion, and if it commended itself to your good judgment you would, perhaps, adopt it. But you would be the final judge in regard to it, and you are here.

There are a great many different points involved in that inquiry, and you cannot safely decide the question without keeping them all in mind. That is peculiarly a question of circumstantial evidence, except as to the testimony of the defendant Dimond himself. Of course he knows whether he wrote them, and he has testified that he did not write them. That is direct testimony. All the other testimony in the case is circumstantial, so far as that question is concerned.

Among other circumstances which the Government relies upon, is the internal evidence, the mis-spellings, where they occur, the mis-pronunciation claimed to have been made by Dimond, and to be shown by the spelling in the letters; matters of fact stated in the letters which it is claimed by the Government it is unreasonable to suppose that anybody else who would have written them knew anything about.

On the other hand it is said, "Here is Dimond himself who 1494 says he did not write them. Here is his reputation for honesty and integrity, shown to have been of the very best"; and then counsel for the defendants call attention to various matters in the letters themselves, which they urge upon you as tending to show that he did not and could not have written them.

Now, that is all a question of fact for you. Think it all over. Weigh it carefully. Consider all the evidence bearing upon that question, and decide whether he did, in fact, write them. It is not necessary that you should find beyond a reasonable doubt that he wrote them, because that is not one of the charges in the indictment. It is only those things charged in the indictment which must be found beyond a reasonable doubt. But if, on the whole, looking the

matter all over, you believe that he wrote them, then you have a right to treat them as evidence against him. If you treat them as evidence against him, what do they show? What do they show on the question of knowledge, as to how these titles were acquired, among other things, and as to whether there was a conspiracy; who was in it; and what the purpose of it was?

So far as you find in those letters statements of matters of fact which may have been within the knowledge of Dimond, then those statements are evidence as against him that the facts are as stated in the letters. So far as they are matters that show that he knew that certain things had been done away back before he came into the conspiracy (such as that he knew of the conspiracy and knew of the defects in the titles),

the letters would tend to show and would be evidence against 1495 him that he did, in fact, know—which is an important question. But there is a good deal in the letters not coming within either of these classes—things that he could not have known anything about, and which it is not important whether he knew about or not, so far as this case is concerned. But they are in the letters, and it is for you to say what the letters were written for as to those portions of the letters. If you think in all the circumstances that he wrote them because he was guilty, that they show guilt, and show an effort on his part to get to cover, to get the Government to apply to him for assistance in some way, so that he could have the Government at his command in some matters, or could dictate terms to it—if you think that was the purpose of writing those portions of the letters then they would be like any other guilty act, and you could consider them as showing that the man was guilty, and knew he was guilty.

Now, I want to call your attention particularly to another very important matter, and that is that it is necessary that you should find that the defendants understood between each other that the use which was to be made of these titles, if they were fraudulent, was the purpose alleged in the indictment, namely, to use them in the way of exchange with the United States.

How did Schneider know it? I have discussed that. Did Hyde and Benson know it, and did they enter into it for that purpose? And did Dimond, before he got through, become aware of it, and then become a party to the conspiracy. If Dimond did become a party to the conspiracy, did he, after he became a party to 1496 it, do something in furtherance of it? If Schneider became aware of the purpose for which these titles were to be used, and that it was the purpose alleged in the indictment, did he, after that do anything in furtherance of it or consent that anything should be done by the others, and remain in the conspiracy after he found out about it?

It is not necessary that Schneider and Dimond should have known each other. They might both be parties to this conspiracy and never have spoken to each other or have known each other [Dimond]\* at all. If when Schneider performed his part of it he knew that such

acts as Dimond performed afterwards were to be performed in order to get the titles, and understood and expected it, and consented to it in his mind and by his conduct; and if Dimond when he came into it knew that such acts as Schneider did perform, if you find that he performed them, had been performed by somebody, whether it was Schneider or somebody else, and assented to it, and came in and did the part that was left to be done in the unlawful conspiracy, then they conspired together within the meaning of the law.

Mr. BAKER: If your Honor please, in the first part of that sentence you used the word "Dimond" where you should have said "Schneider." I think it will be apparent if the stenographer will read it.

(The stenographer read as follows:)

"It is not necessary that Schneider and Dimond should have known each other. They might both be parties to this conspiracy and never have spoken to each other or have known each other at all. If when Dimond performed his part of it he knew that such acts as  
1497 Dimond——

The Court: That should be Schneider. That will be corrected.

Now, it has been suggested that if these men were guilty there were others just as guilty. That does not make any difference. The indictment itself, in one clause of it which I did not read to you, charges that these defendants conspired with each other and with other persons to the grand jury unknown. But that does not make any difference. If there are other persons who might have been prosecuted, and would have been liable, and they are not prosecuted, that is no concern of yours. You are only to consider the question of whether these defendants conspired in the way alleged, and whether the overt act was committed.

Then, it has been called to your attention that the States had received their dollar and a quarter an acre. That does not make a particle of difference. That was not all there was to it. The State prescribed the terms on which it would sell, at one dollar and a quarter an acre, and you would have no right to lie to the State and get the lands by fraud in that way and then say, "You have your dollar and a quarter an acre, and that is all you are entitled to."

It makes no difference that it does not appear that the States have moved in this matter. That has nothing whatever to do with it, so far as that part of the case is concerned. The only question is: Were the titles invalid in fact, and fraudulent in fact? Not whether the State has seen fit to prosecute or not. If it had, it would not make any difference, and if it has not, it does not make any difference.

1498 Now, as to the question of Schneider's being responsible or not, by reason of the statute of limitations: I said to you that it was necessary for you to find in order to convict the defendants, that this conspiracy existed in the District of Columbia; and I also told you that if any overt act was performed in the District of Columbia, as I have defined the phrase "overt act" then the con-

spiracy was brought here, and they did conspire in the District of Columbia.

It is also necessary that this conspiracy should have been alive and active within three years next before the finding of this indictment, and necessary that it should have been alive and active as to each one of the defendants whom you convict. So the question for you to determine is whether it was alive and active—for example, as to Schneider. Now that depends in part on what was the conspiracy that he entered into, if he did enter into one, if he did come into a common understanding with Hyde and Benson, so that he understood what the plan and scheme was on their part, and assented to it and helped it, and they understood he was helping.

Did he know and expect that after the titles had been procured they would be exchanged for other lands, and that that would require these proceedings in Washington; that the titles would have to be worked through the Land Office here? Did he expect that that was a part of the plan and arrangement, that that was what the titles were gotten for, that that was really to be the fruit of the tree, the end

and object of the whole thing, so that he contemplated that 1499 when he did the part which he did, and understood and expected that if he did not have anything to do with that the others would do that, and that that would very likely run through a series of years?

Now, if he understood that, and after he had done his part sat still, acquiescent, willing and expecting that the other things should be done, and did not withdraw from the conspiracy in any way, why then as I said before, what his colleagues did he did in pursuance of the arrangement and understanding. Of course if it had appeared that Schneider was to have a part of the profits the case would be stronger as against him because you would then at once say "Why, he was a partner in it in every sense, and it would be to his interest to stay in it." So that the fact that he was receiving a salary instead of a part of the profits is a matter of fact to be considered by you in determining whether he was consenting to it, to the acts that were to be done afterwards, and expected them to be done, and was doing what he did in order that those things might be done. But if he had not received any salary, if he had done it out of pure love of mischief, or because he was wicked, or from any improper motive, or because he wanted to please Mr. Hyde, and had really become a party to it in the way I have stated, why that would not make any difference. He would still be a conspirator with the others. And it is just the same as to Dimond. The fact that he received a salary instead of receiving a part of the profits is not, of itself, conclusive in this matter.

That is only one matter of fact to be considered with the others.

1500 Now, again, as to Schneider, and whether he did anything or whether anything was done for him and in his behalf within the three years: It appears that he wrote certain letters to the Government (you have had them and read them) claiming that he knew certain things about this matter. There is evidence tending to show that he told Holsinger certain things which Holsinger afterwards put in a report. There is evidence tending to show that he

declared the truth of those things to Burns and to Corbett. There is some evidence outside of that, as to statements made to some other parties whose names I do not recall. But take that matter of what has been called the confession; take the letters, and the matter which it is claimed is shown by the Holsinger report.

Now if he had stood by that, and had gone on and disclosed all he knew about the matter, and said: "I have nothing more to do with this matter," nothing that could have been done by the others after that could affect him at all. He would have been out of it; he would have repudiated it. As bearing on the effect of what he did there, if you find he did it, you are to consider what he did afterwards. If after having made his disclosure as far as he did, he shut his mouth, and said: "I will not say anything more about this matter, the Government shall not get anything more out of me," that is not an act by him in furtherance of the conspiracy, but it is a piece of evidence to be considered by you as bearing on the question whether he was acquiescent—what his attitude of mind toward the conspiracy was.

If he had stood on his disclosure you might have said: "Well, he is out of it from now on"—but in connection with that  
 1501 you are to consider what he said afterwards. If you find that he closed his mouth and refused to say anything more about the matter and kept still in the interest of the others, you would have a right to say that that showed that he was still acquiescent in the matter. It would neutralize if you chose to treat it so, the effect of his former declaration, that he did know and was willing to disclose.

It is necessary for you to find that within the three years Schneider was, in mind and heart, in concert with these parties, although he did not have anything to do himself; that his attitude toward it was what it had been before; that he had not withdrawn from it nor repudiated it; that the thing which he had set in motion was going on in the way he expected it to go on, and was willing that it should go on. If you find all that, then what they did is as if he did it.

Now, as to the alleged confession of Schneider. I will have to say some things in regard to that. The first question is whether he said those things. Now I am not going over the evidence. It has been culled over before you again and again by counsel. Did he make the statements to Holsinger which Holsinger swears he did, which Burns says he admitted he did, and which Corbett says he admitted he did? Or is the Holsinger report to be accounted for in some other way? If he made the statements they are evidence against him that they are true, so far as they are matters which it may reasonably be supposed he knew about. If you find that in some respects they could not have been true, that is evidence for you to consider on the question of whether he said them. Of course he may have said them even if  
 1502 they were not true, or Holsinger may have got the thing right in the main, and got it wrong in details, or he may have got it wrong in the important particulars. It is all a question of fact for you.

But as to the main feature, as disclosed by that report and as testi-



fied to by these witnesses, Holsinger, Burns, and Corbett, are you entirely satisfied that he did state then that Hyde and Henson were acting together and that he knew it, and that they were in this conspiracy, and that he had assisted in it, and assisted in it down to within the three year period?

You have a right to weigh his statement, if you find that he did say it, as evidence tending to show that he had been actually helping within the three-year period. If you find on the whole evidence that he was in the conspiracy before the three-year period, you would not be justified in finding that he was in the conspiracy before the three-year period merely and alone on the confession; but taking all the evidence in the case together, if you are satisfied he was in it before and believe that he said he was in it down to as late a date as the Holsinger report shows, then as against him it would be evidence that he was in it within the three years. But as to the other defendants it would not be evidence at all; it would not be evidence of anything.

Before you could convict them of conspiring with Schneider you would have to be satisfied from other evidence beside the confession, that he was within the conspiracy within three years. Well, was he? What were the motives that actuated him when he made the statement to Holsinger, if you find he made it? And what are  
1503 the motives that are actuating him now? That has been argued before you pro and con. It is all for you to consider and decide. Did he know what he claimed to know at that time, and has he since then decided that it was for his interest not to tell? Is he acting honestly now, and did he testify honestly before you? Or was what he said at that time the truth in substance?

What I said about the Dimond letters is just as true in regard to the statements of Schneider. Where they are matters that may have been within his knowledge they are evidence against him, and you can use them as evidence tending to prove the fact; but if you do not believe they were the fact at all when you take all the evidence together, you are not to convict him because he said those things but only use them as evidence tending to prove that they are true.

I ought to say a word as to this testimony with reference to reputation which has been introduced on the part of the defendant Dimond. The law permits that class of evidence to be received. It is an exception to the rule which generally excludes hearsay testimony. The theory of the law about it is that if a man has so lived in the community as to have acquired a reputation for honesty and integrity, the presumption is that he is entitled to it. That is, the presumption is that he is honest, or else he would not have such a reputation, and that is allowed to be introduced. And when you consider any evidence relating to a man who has borne that sort of reputation, you are to remember the fact that he has borne that reputation, and consider that in deciding whether the charge against him is true.

It has been stated in these words, and I give it to you as an accurate statement of the law:

1504 "Good character is a fact, like all other facts proven in the cause, to be weighed and estimated by the jury and is especially proper to be shown in a case depending on circumstantial evidence. In a doubtful case it may turn the scale in favor of the accused. It must not be allowed however to obscure the other testimony in the case, and cannot justify an acquittal where the evidence of guilt is clear and convincing."

That testimony as to good character is to be weighed by you not only in considering the question whether Dimond wrote the anonymous letters, but in considering the question whether he is guilty of the crime charged; but what weight you shall give to it under the rule I have stated is for you to determine.

You must distinguish between confessions, whether by one party or another, which are admissible only against the party who makes them, and declarations, which amount to acts—things said by the parties while carrying out the conspiracy. Those declarations are just like deeds, and if they are in furtherance of the conspiracy, why then they are evidence against all the parties just as the deeds of the parties are evidence against all.

Now, as to whether an act is an overt act or not, you are to consider, as I said before, what the conspiracy was, what the plan was to do.

Take this case. If it was the agreement between these parties that these fraudulent titles, supposing them to be such, should be worked off on the Government and the titles got through the land office here, was it fairly within the scope of that agreement that if 1505 it became necessary to pay an official here to expedite the business, that that should be done? Whether an alleged overt act is fairly within the scope of the conspiracy is for the jury to say. If it came fairly within the scope of their plan, it made no difference whether they thought about it at the time, whether they talked about it and planned for it. If they were in this dishonest scheme, and you think that in view of what they had agreed to do and were doing to the knowledge of each other, they would not have hesitated a moment to do this if it became necessary, and that they would have expected and understood that a thing like that would be done if it became necessary or appeared desirable, why then it is an act in furtherance of the conspiracy.

How does that strike you as a question of fact in this case? There are these payments to Harlan and Valk alleged here. Were they, as a matter of fact overt acts? That is, were they acts in pursuance of and in furtherance of the unlawful agreement, if you find that it existed between these defendants? If you fail to find that, then as to those counts the defendants should be acquitted. You cannot convict a part of the defendants on one count, and a part on another. You cannot convict all on the first few counts, say, and then convict Benson and Hyde or a part of the defendants on the Harlan and Valk counts. This is practically one charge, although in so many counts. It is one conspiracy with allega-

tions of different acts done in pursuance of it. So that if you find all the defendants, for instance, guilty under those first thirty-five counts or (thirty-four) leaving out the two which are abandoned and then come to consider the other counts, and are not satisfied that those were overt acts as to all the defendants, then there should be an acquittal of all on those counts. If you should find only a part of the defendants guilty on the earlier counts, and should be satisfied that those same parties were also guilty under the final count charging bribery, then you could find those defendants guilty also under those counts. But you cannot split the matter up.

Gentlemen, you are the sole judges of the weight and credibility of the testimony. You are the sole judges of what credence shall be given to the various witnesses. That is what you are for, to look the witnesses in the eye and make up your minds whether they are telling you the truth. It is the impression that the witnesses have made upon you that ought to determine you when you come to decide this case, and not the impression that they may have made upon an advocate, and which he may bring before you in his argument. You should not be influenced at all by any impression that the witnesses may have made upon him.

Take, merely for example, the witness Burns—because so much has been said about him in the argument. Call back to your minds that man as he appeared upon the stand. Recall the testimony which he gave, recall his cross-examination, recall his manner, the way in which he answered, whether he appeared to answer fully, whether he did really appear to remember what he was telling, how he bore the cross-examination, and what opinion you formed as to him at the time, as to whether he was an honest witness or not. If at the time he made you believe what he said by virtue of 1507 the way he testified and the way he bore his cross-examination—his honesty or knowledge of the matter—it is much safer for you to trust that impression than to take to yourselves the impression which he made upon some advocate. You are to weigh his testimony and the testimony of every other witness in view of all the rest of the evidence in the case, to be sure. Keep it all in mind and do not take one witness merely by himself; but ask yourselves whether he is corroborated by others.

The law reposes full confidence in the ability of a jury to distinguish between truth and falsehood, and for my part I heartily concur in the theory of the law. I believe that juries drawn from the body of the people, and familiar with the affairs of daily life, are the best possible judges of such matters. I think they judge the question more accurately than professional men would do. But however that may be it is your province. Nobody can help you in that matter. And the question, when you get to the bottom of it, is: What do you really believe from all the testimony that has been introduced bearing upon a given point? Not to take some artificial rule about it and say "what I would think," or "what ought I to think," but when you have taken the rules of law which the court has given you, and have looked at the evidence through those rules,

what do you believe? What is your conviction about it? It is what your conviction is not what somebody else's conviction might be.

These defendants are charged here by the grand jury with this offense, and the indictment itself is nothing but a charge. It is not evidence at all; and if the indictment stood here alone and no evidence was introduced the defendants would be acquitted instantly.

That is not all. The Government may introduce witness after witness; but no matter how much evidence it introduces until your minds are satisfied beyond a reasonable doubt that the matter is as alleged, the defendants are still to be considered as innocent. The law takes notice of the fact that most men are honest, that the vast majority of men are honest.

When it is charged that a man has done anything that is dishonest there is that presumption that must be overcome. In weighing every question of fact in a criminal court where it is alleged that a man has done a dishonest thing, the jury say: "Well, probably that is not true." The presumption is that it is not true; and until that presumption is removed and the jury is convinced, keeping in mind that presumption that the thing is true and there is no reasonable doubt about it, the defendants are to be treated and considered and thought of as innocent.

As I said before, this is a case of circumstantial evidence, and the question is whether, when you take all the circumstances together which you find established, which you believe existed, they can be reconciled on the theory that the defendants are innocent. If they can be reasonably reconciled on any theory of innocence, why the law delights to adopt that theory, and it would be your duty and your pleasure to acquit them. But if, when you take all the circumstances which, from the evidence, you believe existed, into consideration, you cannot come to any reasonable conclusion except that the charge is true as I have stated it, why then of course they are guilty within the meaning of the law, and you have nothing to do except to say so, if your minds are entirely satisfied.

What is a reasonable doubt? The words themselves are as plain as any definition that has ever been given to them. A doubt that it is reasonable to entertain, when you consider all the evidence in the case—not some imagination, not some surmise or some conjecture, not some doubt which you have to cudgel your brains in order to raise. That is not what it means. It does not mean some doubt which you make yourself entertain out of sympathy or out of a desire to reach a certain result in a case; but it is an honest doubt which fairly arises out of the evidence when you consider it all, and leaves your mind in that uncertain, unsettled condition, so that as to the important matters of fact you cannot really say that you feel certain they are true, you cannot settle down into an abiding conviction that they are true. You may think it is so one moment, and doubt it the next moment and think otherwise, perhaps, the next.

It means proof to a moral certainty, as it is sometimes put: proof

upon which a man would act in the most important concerns of his own daily life, and feel sure that he was making no mistake. That is the measure of proof required.

Now, search your own hearts. We have been over this evidence here this morning, and I have stated the rules of law. Search your own hearts. Look into your own minds, and say to yourselves whether you are satisfied that this unlawful agreement did exist

1510 between these men, whether there was this mutual understanding within the law as explained to you this morning and whether an overt act was done in pursuance of it.

If your mind settles down to the conviction that it is true, from the evidence, and you feel sure of it, and have an abiding conviction of it, and that you will feel sure of it to-morrow and the next day, why then it is proved beyond a reasonable doubt. If not, it is not.

It is your reason that must control. It is the reasonable doubt, not the unreasonable one, that entitles the defendants to be acquitted. You must not be over-suspicious. You must keep in mind the presumption of innocence on the one hand; on the other hand, you must not suffer yourselves to be hoodwinked. You must not wish to be fooled for the sake of doing a kind act, as it may seem to you, but you must wish to find the very truth of the matter. All your deliberations must be to that end, so that when you get through you will feel that you have not been fooled or deceived by anybody, or by yourself, or by your sympathy, or prejudice or anything else, but have come to the very fact of the matter, so far as the evidence shows it to you, or so far as you could determine the matter upon the evidence.

I suppose I ought to go over the prayers which have been granted here in order that I may not overlook anything. Mr. Clerk, will you kindly read them, and when I stop you I will comment upon them. These are the prayers that have been granted in behalf of the defendants, and some of them may require a little explanation as they are read.

(The Clerk thereupon read as follows:)

1511 "8. The indictment upon which the defendants are on trial is merely an accusation, and it is not to be considered by the jury as evidence against the defendants or any of them for any purpose.

"9. The defendants are presumed to be innocent of the charge upon which they are on trial, and that presumption attends them throughout the trial, and of itself entitles them to a verdict of not guilty, unless it is overcome by evidence which satisfies the jury, beyond a reasonable doubt of their guilt.

"11. Even if the jury should be satisfied by the evidence beyond a reasonable doubt that the defendant John A. Benson made to Woodford D. Harlan and William E. Valk, respectively, the payments which are set forth as overt acts in counts 35 to 42 of the indictment, but are not satisfied by the evidence beyond a reasonable doubt that such payments or any of them were made pursuant to any agreement or understanding, express or implied, between said

Benson and any other of the defendants, they should, as to those counts, render a verdict of not guilty as to all of the defendants."

The Court: As to that, you will keep in mind what I said to you before. If the acts of paying this money were in furtherance of the conspiracy, in pursuance of it, within the definition that I gave you, then they were done in pursuance of an implied agreement. It is not necessary that it should have been expressed between the parties, nor even that they should have thought about it, if it was strictly pursuant to the conspiracy.

(The Clerk thereupon continued reading as follows:)

"13. The evidence that has been admitted in this case 1512 as to acts of the several defendants prior to the 17th day of

February, 1901, is to be considered by the jury only so far as in the opinion of the jury it may tend, in connection with the other evidence in the case, to prove that the defendants, or two or more of them, conspired as charged in the indictment after that date and before the 17th day of February, 1904, on which last mentioned day the indictment on trial was filed in court by the grand jury. The defendants are not on trial for any conspiracy which they, or any of them, may have entered into more than three years before the finding of the indictment."

The Court: That last sentence is an unfortunate one, in one respect. The defendants are on trial for a conspiracy which the Government claims was entered into back of the three years, but if it did not extend to within the three year period they could not be convicted on it. As I told you before, it must be alive and active within the three years.

(The Clerk continued reading as follows:)

"17. The jury are instructed that the presumption is, to begin with, that each of the defendants is innocent of this charge. It was necessary for any of them to bring in any evidence in this case. The whole burden rested upon the Government, and each of the defendants could have sat still and said nothing, and produced no witnesses. There is that presumption with which you begin the case, and that presumption stays with each of the defendants, travels

with him through the case, and is a piece of evidence to be 1513 weighed by you in connection with all the evidence in the case in deciding whether the charge is made out. Until your minds are convinced, beyond a reasonable doubt, after weighing all the other evidence in the case, and after weighing the presumption of innocence that exists in his favor, that the charge is made out and he is guilty as indicted each of the defendants is to be considered by you as innocent."

The Clerk continued the reading of the prayers granted on behalf of the defendants as follows:

1. There is no evidence in this case that the defendant, John A. Benson was a party to any agreement or conspiracy with any of his co-defendants which involved the use of the names of fictitious persons or of forged applications, affidavits, or conveyances, in the

acquisition of lands from the State of Oregon, or the State of California, or that he had knowledge that the names of fictitious persons or forged applications, affidavits or conveyances had been used, if they were so used, in the acquisition by any of his co-defendants of any such lands.

"2. The charge in the indictment is conspiracy. Conspiracy under the law is a corrupt agreement or combination between two or more persons to do an unlawful act, or to effect a lawful purpose through the use of unlawful means. The charge here made is in substance that the defendants entered into an unlawful and corrupt agreement to defraud the United States of the possession and use of and the title to large tracts of the public lands of the United States by exchanging for such lands other lands obtained by the defendants from the States of California and Oregon through the means recited in the indictment, and that in furtherance of such conspiracy the  
1514 defendants committed in the District of Columbia overt acts, or acts intended to forward such agreement.

"The burden of proof is upon the United States to establish both of these elements of the charge beyond a reasonable doubt and unless you shall find beyond a reasonable doubt that there was the unlawful agreement charged, and also that an overt act in pursuance thereof was committed in the District of Columbia, the defendants should be acquitted.

"3. The offense charged is conspiracy: That is a corrupt agreement.

"Before you can convict the defendant Benson of any offense under the indictment you must be satisfied by the evidence in this case that he, Benson, entered into a corrupt agreement with some one of his co-defendants, either Hyde, Dimond or Schneider, to defraud the United States in manner and form as alleged in the indictment.

"And in that respect I instruct you that before you can find the defendant guilty upon any of the charges growing out of the obtaining of the titles obtained from the States of Oregon and California, the evidence must convince you beyond a reasonable doubt that said Benson either directed them to be obtained in the manner in which the indictment charges they were obtained or had knowledge or notice of the manner in which it is alleged they were obtained and with such knowledge either transferred them to the United States or aided and assisted in so doing under a corrupt agreement with his co-defendants or some one of them to so defraud the United States by so transferring said titles to them.

"And if you should not find from the evidence beyond a  
1515 reasonable doubt that said Benson had knowledge or notice that the titles in question were obtained through unlawful methods and that with such knowledge he sought to exchange them with the United States, you should acquit him.

"5. The acts of one of the defendants cannot be used against the others or any of them unless they were done with their authority or acquiescence, expressed or implied.

"If therefore the jury shall find from the evidence that the agreements of the defendant John A. Benson with the witnesses Harlan and Valk and his payments of money to them respectively on account

thereof, was made upon his own account and to forward only the business with which he was personally concerned, and were not made with the authority, or consent or knowledge of any of his co-defendants, or to forward any agreement with them, then they are instructed that such acts of the defendant Benson are not to be further considered in this case."

The Court: The jury will consider that in connection with the explanation that has been made of various expressions contained in that request.

(The Clerk continued reading the prayers as follows:)

"6. You are further instructed that under the laws of the State of California school lands granted to the State by the United States, might be taken up by the applicant for the purpose of speculation, the only limitation being that the application must be for the use and benefit of the applicant and not for the use or benefit of another.

"By the terms 'for the use and benefit' of the applicant, it is not meant that the applicant expects or intends to go into possession and occupy the land and personally devote it to the uses of which 1516 it is capable. The provision of the section simply means

that when one makes application to purchase he does so with the intention and purpose of deriving whatever profit or advantage may accrue through such purchase for himself alone. He may properly contemplate a sale or exchange of the land at a profit, and the fact that the purchase is for speculative purposes only will in no wise affect its validity.

"All that is prohibited by the act is a prior agreement—the acting for another in the purchase.

"I further charge you that any of the defendants might rightfully have let it be known that he was willing to buy lands in the 16th and 36th sections in California at a price in excess of that which it would have cost to obtain such lands from the State and that any person knowing of such offer might rightfully make application to the State for such lands with the purpose to take advantage of such offer, immediately upon obtaining his certificate of purchase.

"7. There has been introduced in evidence a contract entered into between defendants Benson and Hyde providing that Benson shall have the right and privilege of selling outside of the State of California certain scrip from the Cascade Forest Reserve in the State of Oregon.

I instruct you that they had the lawful right to enter into such an agreement, if the same was entered into in good faith and without fraud, and I further instruct you that the same is presumed to be fair, honest and free from fraud and that the burden of showing that the agreement was not what it purports to be is upon the prosecution.

1517 "8. There is evidence in this case that the right to select lieu lands of the Government of the United States is called scrip. That said so-called scrip consisted of an abstract of title under the seal of the recorder of the county in which said base lands were situated, together with the certificate of the proper county officers that said base lands were free and clear of all liens and incumbrances. There is also evidence that said papers, so-called scrip passed current



from hand to hand. I charge you that in the absence of notice or knowledge to the contrary the buyer or seller had the right to rely upon the facts set forth in said abstract as to the title of said base lands, and the fact that the titles to the said base lands were other than as shown by said abstracts, and that the defendant Benson had knowledge or notice of said fact must be established by the Government beyond a reasonable doubt, in order to charge him with liability therefor.

*"Prayers Granted on Behalf of the Defendant Dimond."*

"4. That if the jury find from the evidence that the defendant Dimond entered into the employ of the defendant Hyde in good faith, and without being informed or knowing of any conspiracy between the defendant Hyde and any other person, as claimed by the Government, and that said Dimond on learning that it was alleged that the base lands had been improperly acquired or for unlawful or improper purposes, then terminated his relations with defendant

Hyde and retired from his employment then the jury should  
1518 acquit the defendant Dimond.

"6. If the jury find from the evidence that the defendant Dimond was not acting in concert or agreement with the defendants in whatever acts he did; that is, that no agreement or combination with reference to such acts had been entered into between him and any other parties with any common design or purpose to effect the common end of the alleged conspiracy, then the verdict of the jury must be for the acquittal of the Defendant Dimond.

"9. The jury cannot convict the defendant Dimond unless it is satisfied beyond a reasonable doubt that Dimond either entered into the employ of the defendant Hyde with knowledge of the alleged conspiracy of said Hyde and others to defraud the United States Government, as alleged by the indictment, or after such employment obtained such knowledge and thereafter continued therein with the intent and purpose of furthering the objects of said conspiracy.

"10. That if defendant Dimond, after entering into the employ of the defendant Hyde or other defendants without knowledge of the manner in which said lands were obtained and the purpose to exchange the same for other lands of the United States and that Dimond on learning that the titles to said lands were attained or challenged thereupon terminated his relations with the defendant Hyde or others, then defendant Dimond cannot be convicted.

"12. The jury is instructed that there is no direct evidence connecting the defendant Dimond with the authorship or sending of the anonymous letters introduced by the Government; the evidence  
tending to connect Dimond with said letters is wholly circum-  
1519 stantial and in considering his connection therewith the jury must include Dimond's own testimony respecting the same and also the good reputation of Dimond and unless convinced beyond a reasonable doubt that Dimond was the author of said letters"—

The COURT: That is left out of the others.

The CLERK: It is in the copy I have here.

The COURT: The words "beyond a reasonable doubt" should be excluded, as I stated to the jury before.

Mr. WORTHINGTON: Yes.

(The Clerk continued reading as follows:)

"And unless convinced that Dimond was the author of said letters the jury cannot consider them or the testimony given in relation thereto in determining the innocence or guilt of Dimond under the indictment herein.

"15. The jury is instructed that, unless they are convinced that the defendant Dimond, is the author of the anonymous letters introduced in evidence herein they must disregard said letters and their contents and not take them into consideration as testimony in this case.

*"Prayers Granted on Behalf of the Defendant Schneider.*

"2. The jury are instructed that the mere fact that the witness Holsinger made up and forwarded to the Commissioner of the General Land Office at Washington, D. C., the understanding of what he, the witness, remembered of the statements alleged to have been made to him by the defendant Schneider, is not conclusive proof that the defendant Schneider made any or all of the statements set forth in the so-called Holsinger report.

"And if the jury believe that the defendant Schneider did make any of the statements set out in the so-called Holsinger report, then such statements are not to be considered as any act in furtherance of the conspiracy set out in the indictment.

"And the jury are further instructed that even if they should find from the evidence that the defendant Schneider made all the statements contained in the so-called Holsinger report, and afterwards declined to swear to such facts or to testify in behalf of the prosecution in this case, then his said declination is not to be considered as any act in furtherance of the conspiracy alleged in the indictment."

The COURT: Those are all of them, I think. I will tell you, gentlemen of the jury, that these are the instructions which I have granted on request of the various defendants, and I think they are sound propositions of law, taken in connection with the charge I have given you.

There are two or three other requests that have come in later. One is entitled "Additional prayers on behalf of all" the defendants, and is numbered 18. I think I have given it in substance already in what I have said to the jury, but I will read it for the sake of making sure:

"You are further instructed that it was not unlawful for the defendants or any of them to go, or send an agent into the State of Oregon and there let it be known that he was willing to buy lands in the 16th and 36th Sections in that State at a price in excess of that which it would have cost to obtain such lands from the

State, and further, that any person, whether a citizen of  
 1521 Oregon or not, might rightfully *make* application to the  
 State"—

Whether a citizen or not?

Mr. BAKER: No.

The COURT: Oh, he must be a resident.

Mr. PUGH: A citizen of the United States, and a resident of  
 Oregon.

The COURT: He must be a resident of Oregon. But I do not  
 think it is a practical question.

Mr. BIRNEY: I think there is that distinction between the law  
 of California and the law of Oregon.

The COURT: It is not a practical question.

(Reading:)

"Whether a citizen of Oregon or not, might rightfully make  
 application to the State for such lands with the purpose to take  
 advantage of such offer immediately upon the acceptance by the  
 State of his application."

I have added these words, which I think necessary to give a fair  
 understanding of it:

"Provided, there was no understanding between the applicant  
 and the defendants at the time when the application was made  
 that the rights obtained under it should be transferred to the  
 defendants."

No. 19, of course is refused, as I interpret the words "personally  
 qualified" because that would, perhaps, include their intention  
 to apply in good faith and for their own benefit exclusively. For  
 that reason I refuse that.

No. 8, in behalf of the defendant Schneider, I have refused,  
 although I think the substance of it has been given in the charge  
 already. I do not choose to adopt the language in which it  
 1522 is framed.

No. 9 is also refused, on behalf of the defendant Schneider.

These various counts, gentlemen of the jury, all charge, as I  
 said, one conspiracy, and then an overt act or acts in furtherance  
 of it; and the whole indictment, when taken together, it is agreed  
 both on the part of the Government and of the defendants charges  
 only one offense, or assumes to charge only one offense. If the de-  
 fendants should be found guilty on all of the counts it would subject  
 the defendants to only one penalty. There are various methods of  
 stating the same offense, the same conspiracy, and if one overt act  
 were found to be performed as charged it would make the offense  
 complete. So that I shall require you to render a separate verdict  
 on each of the counts. Of course if you should agree that the  
 defendants were all innocent upon all of the counts, we should not  
 require you to go through the whole list; and if you should find the  
 defendants all guilty upon all of the counts we would not take the  
 time, I suppose to go through with each one; or, if you should find  
 all the defendants or certain of them guilty upon the first thirty-  
 four or thirty-five counts, excluding the bribery counts, we might  
 take your verdict in that form and then as to the bribery counts take

it separately. But we shall have to have upon the record your verdict as to each of the counts.

I perhaps hardly need to say anything to you in closing as to the spirit in which you must approach a decision of this case. The case has been argued most thoroughly and ably before you, and 1523 has been tried most thoroughly and ably. You must have appreciated that. You have had the benefit of suggestions from counsel learned, experienced and able, and you must have profited very greatly by those suggestions, whatever conclusion you reach, just as the Court has profited all through the trial by their views and assistance upon questions of law.

In the heat of argument advocates may make appeals to sympathy or to prejudice under the guise of something which is legitimate and consequently the Court cannot exclude it. It is the duty of the Court to keep the argument within bounds. Sometimes counsel in their zeal will get outside the bounds, but that is readily to be overlooked and pardoned, when we remember the interest they have, and properly have, in this case. When the rights of the Government or the rights of the defendants are committed to them, they feel that they must put forth every exertion to do their duty, and it is not at all strange that they may step over. You will not remember those things when you go into the jury-room, or allow them to influence you. As I say, all those things are to be easily excused; but if the Court or the jury should manifest any such zeal or partiality it could not be excused. It is the duty of the Court and of the jury to take this matter up without any feeling, without any prejudice, without any sympathy, and decide it as a pure intellectual question, letting our reason act.

That is the attitude that we must assume toward the case, and when you do assume that attitude toward it the dignity of your position is not surpassed by any position, and the importance of the duty you are to perform does not dwindle when compared 1524 with any other duty which men in civil life have to perform.

When you have tried to dispose of this case in that spirit, as you will, you have done a patriotic service as much as if you had taken arms in the field—and possibly the rigor of your service may suggest to you the aptness of the comparison with military life. You are fortunately near the end of your long and arduous service here.

I said you were not to be influenced at all by sympathy, and I am sure you will not be. It is natural when you look upon an individual brought before you, to be easily moved by appeals to sympathy, and where a case shows that the defendants having been doing dishonorable things, wherever that is true sometimes the prejudice of the jury will be awakened against them, and there will be for a time a feeling of resentment. You may feel: "Well, they deserve to be convicted whether they have done the precise thing charged or not"—but that will not do. You are not to be influenced on the one hand by sympathy, nor on the other hand by any feeling of resentment or prejudice. You are not to allow your moral sense to be blunted. You are not to shut your perceptions of what

is honest and true, and look upon what is dishonest as honest. And when witnesses take the stand who appear to have done dishonest things you may weigh their testimony in view of what you find they have done. But you are not to harbor any resentment. You are to be as passionless as the law itself.

In some jurisdictions cases between the Government and an individual are entitled "The People vs. the defendant"; and whether so entitled or not, that is the true title of this case and of every other criminal case. The Government of the United States is nothing but an agent and trustee for all the people. The property that it holds it holds as a trustee for all the people, not for a few men who may seek to appropriate it to themselves; and this charge, if it is a true charge, is a charge by the people of the United States against these defendants, and not merely by a government or a machine. And you are to keep in mind when you go to the jury room to consider this case, the gravity of it, not merely to the defendants. You are not merely to see them before you and think of the consequence to them but you are to remember that you represent eighty millions of people of the United States, and that the controversy is between them and these defendants, and you are to do equal right and justice between these parties."

To the following portion of said charge, counsel for the defendants, and each of them duly excepted:

(The indictment.)

"It says that Hyde and Benson were each engaged in the business of getting title to public lands of the United States outside of forest reserves in exchange for school lands lying within such reserves; that they were carrying on that business in San Francisco."

Said exception was stated to the Court to be on the ground that taking the paragraph of the indictment referred to with what follows in the first count of the indictment, the only proper and necessary construction of it is that the defendants, Benson and Hyde, were jointly engaged in the business of getting title to public lands of the United States outside of forest reserves, in exchange for school lands lying within such reservations.

The defendants and each of them duly excepted to the following portion of said charge:

"As to each defendant, you will remember it to be true that some evidence has been introduced against him that was not admitted as against the others. For this reason it is possible that there may be a verdict against one only of the defendants, although in fact he could not be guilty alone. You see that necessarily results, because each one is to be tried on the evidence which was admitted against him. As to most of the evidence, it was admitted as against all; but there was some evidence—for instance, the alleged confessions of Schneider—which was admitted as against him only. Now, if the evidence which was admitted as against Schneider was sufficient to satisfy you that he did conspire with the other defendants, or some of them, as the Court shall charge you you may find, then

you might convict him, although, when you came to take the evidence against other defendants, and to consider only what was admitted against them, you might not find sufficient evidence that had been admitted against them to convict them. The same would be true as to Dimond, as to whom a good deal of evidence was admitted that was not received as against the other defendants. And I think it is true of each of the defendants, that some evidence has been introduced as against that defendant only.

"So that it is true, as I stated in a proposition for the benefit of counsel, that there may be a verdict against any of the defendants, whether one or more, as to whom the evidence submitted, received against him or them, proves that he or they conspired as charged, provided any overt act is also proved as charged."

This exception was stated to the Court to be upon the ground as to the defendant Hyde that it is not competent in any case where two or more persons are charged with conspiracy, and where they are all on trial, to find a verdict against one of them only in any aspect of the evidence; and secondly, that as to the defendant Hyde there was no evidence in the case that would justify a verdict against him alone, even if the principle upon which the Court announced that doctrine to the jury is, in the abstract, correct.

The defendants and each of them duly excepted to the following portion of said charge:

"If the defendants agreed together to defraud the United States out of the lands described in the general words of the indictment, and to do it by the fraudulent means there stated, and to accomplish their said purpose by doing or having done here in the District of Columbia any of the things alleged in the indictment as to be done here, and any of such things were done here pursuant to said agreement, then it is the same as if they had all been here and actually engaged in the doing of them. As far as such acts are concerned, they are to be treated as having been performed here by the defendants in person; and, moreover, such acts are characterized by the purpose for which they were performed. Being performed, as we are now supposing for the moment that they were, for the purpose of carrying out the said agreement of the defendants, said agreement itself is contained in the acts, and the conspiracy is here just as truly as if the defendants were all here in person, doing those things with the common mind and purpose which contemplated them."

And to the following portion of the charge also each of the defendants duly excepted:

"If Schneider was a member of the conspiracy back of the three-year period, and it was a part of that conspiracy that acts mentioned in the indictment should be done in furtherance of the conspiracy from time to time thereafter as occasion might require through a series of years until the object of the conspiracy should have been accomplished, although he himself was not to do and did not do anything within the three-year period, and if after doing his part he remained acquiescent, expecting and understanding that said

further acts would be performed by the other members of the conspiracy, and did nothing to repudiate it or withdraw from it, the acts of the other members of the conspiracy in furtherance of it, would be his acts, and would have the same effect against him as if he had done them himself. He would still be acting through his colleagues. He might be playing his part by keeping still as much as he did formerly by acting. If these titles were fraudulent, as alleged, and he assisted in procuring them for the purpose of having them used thereafter by other members of the conspiracy in effecting the fraudulent exchange alleged in the indictment, he was setting in motion a force which took him along with it, as long as he continued acquiescent and those things were being done 1529 which he had contemplated and agreed should be done."

To the following portion of said charge each of the defendants duly excepted:

"So, too, if one drops out of a conspiracy, he remains liable for what was done while he constituted a part of it; and he may continue to be in the conspiracy and to be bound by the acts of his co-conspirators in furtherance of it, even after he has ceased to act in it himself, if he has not in fact withdrawn from it."

To the following portion of said charge also, each of the defendants duly excepted:

"How were these titles in fact obtained? Did the applicants who did make application for them really apply for them for their own use and benefit alone; or were they applying for them because they were hired to do so by Hyde and Benson or either of them, either directly or through Schneider or anybody else? And when they made the application, did they have that understanding with the defendant Hyde or Benson, or their agents, that they should turn them over to them?"

"If that was the situation, then the titles as to the applicants, and as to those who had notice of how they were acquired, were fraudulent as against the States. The State had said: 'We will grant these lands only to those who apply for them for themselves, and not to anybody who applies for them to turn them right over to somebody else, having an agreement with those other persons to turn them over, so that they are merely acting as tools or figureheads.' 1530

That was the State statute. The State said: 'We will not grant titles in that way; and if anyone undertakes to get titles in that way, they shall be invalid.' And if that is the way they were obtained, they were invalid."

The ground of this exception, as stated to the Court, being that the titles obtained from the State were perfectly and absolutely valid as to all persons and at all times, except as to the particular State which had given the title and which alone could assail it.

The defendants and each of them also excepted to the following portion of said charge, in which the Court, referring to the evidence tending to show that notaries affixed their seals and put on their jurats when the party making the application for State lands did not appear before them, said:

"It does not make any difference how universal the custom may

have been, except that if it was universal it may tend to show that those were the means employed."

The ground of this exception, as stated to the Court, being that the evidence as to such custom might also have the effect of satisfying the jury that there was no conspiracy between the defendants or arrangement between them about it—that if everybody was doing it, it would not be a thing that they would be apt to speak to each other about.

The defendants and each of them also duly excepted to the following portion of said charge:

1531 "Or if he did not know it, do you think, as honest and reasonable men, sitting on that jury, that the circumstances were such that if he had been honest and reasonable in the position in which he was placed he would have inquired about it, and, if he had inquired, would have found out the true facts about it—would have asked Mr. Hyde how he got them, and, if he had been told that Schneider got them, would have asked Schneider how he got them, and what the circumstances were, if he had been honest and reasonable?"

"That is the test. A man cannot shut his eyes to the truth and then say he did not know."

The defendants and each of them also excepted to the following portion of said charge:

"Now, I think, I am justified in advising you that written evidence, letters, for instance, written by parties at the time, are entitled to peculiar consideration as evidence.

"When a witness takes the stand and says that a man said so and so five or six years ago, he may be mistaken—he may not remember; but when you have in black and white before you the words that were actually used, you are not in doubt any longer about what the words were."

The ground of this exception, as stated to the Court, being that this paragraph was an infringement by the Court upon the province of the jury, that if the jury should think that the oral testimony was of more weight than written evidence, it would be within their province to give it more weight.

1532 The defendants and each of them duly excepted to the portion of the charge in which the Court, referring to the evidence bearing upon the question whether the defendant Dimond wrote the anonymous letters referred to in this bill of exceptions, said to the jury:

"That has been treated in the argument as a very important question, and justly so. You cannot fail to see the importance of that question."

The ground of this exception, as stated to the Court, being that it was for the jury solely to pass upon the question whether the authorship of the anonymous letters was a matter of great importance, or of any importance—that they might think that the defendant Dimond wrote them and at the same time think that they were of no consequence in the case.



The defendants and each of them also duly excepted to the following portion of said charge:

"It is not necessary that Schneider and Dimond should have known each other. They might both be parties to this conspiracy and never have spoken to each other or have known each other at all. If, when Schneider performed his part of it, he knew that such acts as Dimond performed afterwards were to be performed in order to get the titles, and understood and expected it, and consented to it in his mind and by his conduct; and if Dimond, when he came into it, knew that such acts as Schneider did perform, if you find that he performed them, had been performed by somebody, whether it was Schneider or somebody else, and assented to it, and came in and did the part that was left to be done in the unlawful conspiracy, then they  
1533 conspired together within the meaning of the law."

In taking this exception on behalf of the defendant Hyde, his counsel stated that while that portion of the charge applied only to the defendant Schneider, the defendant Hyde excepted on the ground that it was possible, and perhaps probable, that any erroneous instruction which effected the question of the conviction of any of the other defendants would necessarily affect the guilt or innocence of the defendant Hyde.

The defendants and each of them also duly excepted to the following portion of said charge:

"Now, if he had stood *ny* that, and had gone on and disclosed all he knew about the matter, and said: 'I have nothing more to do with this matter', nothing that could have been done by the others after that could effect him at all. He would have been out of it; he would have repudiated it. As bearing on the effect of what he did there, if you find he did it, you are to consider what he did afterwards. If, after having made his disclosure as far as he did, he shut his mouth and said: 'I will not say anything more about this matter; the government shall not get anything more out of me', that is not an act by him in furtherance of the conspiracy, but it is a piece of evidence to be considered by you as bearing on the question whether he was acquiescent—what his attitude of mind toward the conspiracy was.

"If he had stood on his disclosure, you might have said: 'Well, he is out of it from now on'—but in connection with that you are  
1534 to consider what he said afterwards. If you find that he closed his mouth and refused to say anything more about the matter and kept still in the interest of the others, you would have a right to say that that showed that he was still acquiescent in the matter. It would neutralize if you chose to treat it so, the effect of his former declaration, that he did know, and was willing to disclose."

The ground of this exception, as stated to the Court, being that if Schneider by the communications he made to the Government, directly or through Holsinger or Zabriskie, had withdrawn from the conspiracy, the mere fact that he afterwards refused to say anything about it could not have the effect of putting him back into it.

The defendants and each of them also duly excepted to the following portion of said charge:

"If it was the agreement between these parties that these fraudulent titles, supposing them to be such, should be worked off on the Government, and the titles got through the Land Office here, was it fairly within the scope of that agreement that if it became necessary to pay an official here to expedite the business that that should be done? Whether an alleged overt act is fairly within the scope of the conspiracy, is for the jury to say. If it came fairly within the scope of their plan, it made no difference whether they thought about it at the time, whether they talked about it and planned it. If they were in this dishonest scheme, and you think that in view of what they had agreed to do and were doing to the knowledge of each other, that they would not have hesitated a moment to do this if it became necessary, and that they would have expected and understood  
1535 that a thing like that would be done if it became necessary or appeared desirable, why, then, it is an act in furtherance of the conspiracy."

The ground of this exception, as stated to the Court on behalf of each of the defendants, Hyde, Schneider and Dimond respectively, being that there was no evidence sufficient to go to the jury tending to show that such other defendant authorized or had knowledge of the payments made by the defendant Benson to said Harlan or said Valk.

Thereupon, after a consultation between the Court and counsel, out of the hearing of the jury, the Court further instructed the jury as follows:

Gentlemen of the jury, my attention has been called to some expressions that I used which it is thought might have been misunderstood by the jury. In saying that the charge in the indictment was a general charge of conspiracy to get lands outside of reserves in general exchange for lands inside the reserves generally, I told you that if there was a conspiracy, and it related to certain definitely described tracts of land, that would not be the conspiracy charged; but I am asked to tell you that I did not mean by that some particular piece of land. But, for example, if the conspiracy was restricted to certain reserves (the Cascade Reserve, for instance); if it was restricted in any way so that it could have been more definitely described in the indictment as referring to certain particular  
1536 localities (giving it a broader meaning than I gave it before)

it would not be the conspiracy charged, to the extent in which the conspiracy charged is a general one in the words stated in the indictment; and that must be the one found if the defendants are convicted.

One or two of counsel misunderstood what I said as to the form of the verdicts; and possibly you may have misunderstood it. You cannot convict a part of the defendants under one count and part under another. For example, if you should convict all the defendants under the earlier counts of the indictment, or some of them, and then come to the final counts charging bribery as overt acts, you could

not convict a smaller number, or different defendants, on those counts. Does that cover your point?

Mr. WORTHINGTON: That was not the point. I understood your Honor to say that the jury could convict part of the defendants on one count, and all of them on some others.

The COURT: No; that could not be done. The defendants found guilty must be the same as to each count as to which you return a verdict, because it is one conspiracy; and when you determine who was in the conspiracy, then you decide whether the overt acts were in pursuance of that conspiracy and were performed; and it will be against the same defendants if you find it at all. It must be.

I used the expression, with reference to "reasonable doubt" that it was a doubt arising out of the evidence. It would have been more accurate if I had said "evidence or want of evidence."

I omitted, through oversight, to speak to you of the importance of considering the interest which witnesses have in the case

1537 when you are deciding what credence you will give to them.

No matter who the witness is, whether he is a party to the case or not, if he has an interest in the case you are to consider that in determining how much weight you will give to his testimony. Consider how far, if at all you think he has been influenced by his interest in the case. That applies to all witnesses who appear to have any interest in the case which may have biased them—to the defendants on account of the interest which they have in the case, and to any other witness, in proportion to the interest which you may think he has.

You may take the case, gentlemen.

Thereupon at about the hour of — o'clock on Friday, June 19, 1908, the jury retired to consider of their verdict.

Monday, June 22, 1908 at 11:30 A. M. the jury returned to the Court room and the foreman announced that they were unable to agree. The Court thereupon instructed the jury to retire for further deliberation and make another effort to agree upon a verdict, charging them however, that should they render a verdict it must be one to which they all freely agreed; that the law would not recognize a coerced verdict or one which was not the free expression of the views and opinions of the jurymen; and that if after another conscientious effort the jury still fail to agree they should return

1538 to the Court and so state. That it was not the purpose of the Court to unduly prolong their deliberations, and that if they could not conscientiously and freely agree upon a verdict they would be discharged.

At ten minutes before three o'clock on the afternoon of June 22, 1908, the jury having been brought into the Court room by direction of the Court, the following occurred:

The COURT: Mr. Foreman, you have been unable to agree?

The FOREMAN: We have been unable to agree, sir.

The COURT: I have one further suggestion to make to you, after consultation with counsel. I think I ought to tell you that under

the law as I have held it in this case, and which is settled as the law of this case for this trial, it is possible for you to clear up the record as to part of the defendants, even though you should not be able to agree as to others. If you can agree as to any one of the defendants, as to whether he is guilty or not guilty, you may do so. If there are any of the defendants as to whom you can say "Guilty" or "Not Guilty," and all agree, you may return such a verdict as to such defendants; and as to those defendants touching whom you cannot agree, you may so report.

So that I will ask you to retire to your room and see if you can decide the case as to any of the defendants distinguishing carefully between the different counts of the indictment—especially between the first thirty-four or thirty-five counts, which are outside of the bribery charges, and the last eight counts, I think which deal with the bribery as overt acts.

Begin for instance, with the defendant Hyde and say as to 1539 the early counts, one by one, whether you find him guilty or not guilty; and then as to the bribery counts, as to those overt acts, whether you find him guilty on those, or not guilty. And so with each of the other defendants.

It is possible that you may be able to relieve the docket as to some of the parties although you cannot as to all.

On two of the counts you will, as directed, return a verdict of "Not guilty." 29 and 33, I think are the numbers. You have them.

So I will ask you to retire and take up that question, and see if you can decide the case to that extent.

Mr. WORTHINGTON: Will you let the jury wait one moment? I want to speak to your Honor.

(At this point a conference took place between the Court and counsel on both sides.)

The Court: In order that there may be no possible misunderstanding I will remind you again that of course you cannot convict under any count without you find the conspiracy established, and the overt acts also; but you might find it as to one defendant on the evidence against him, whereas you could not find it as to the other defendants on the evidence against them. But you will take up each count by itself, and remember that it involves the charge of conspiracy and the overt act—each one. I think you will understand.

(The jury thereupon retired to consider further of their verdict.)

1540 Shortly after the jury retired as last stated, they sent word to the Court that they had agreed upon a verdict, and at half-past three o'clock on the afternoon of June 22, 1908, the jury were accordingly brought to the court room by direction of the Court, and rendered their verdict.

Each of the foregoing exceptions was duly taken by each of the defendants Hyde and Schneider, at the time it purports to have been taken in the foregoing statement of the proceedings of the trial, and each of said exceptions was duly noted by the Court upon its minutes at the time it was taken and before the jury retired to consider as to

its verdict; and the defendants Hyde and Schneider each requests the Court to sign this his bill of exceptions, which is done accordingly this fourth day of November, 1909, now for then.

WENDELL P. STAFFORD, *Justice*.

Hon. D. W. Baker, Attorney of the United States for the District of Columbia:

Please take notice that on Thursday April 15th, 1909, at the opening of the Court, or as soon thereafter as counsel can be heard, we shall present to Mr. Justice Stafford in Criminal Court No. 1, for settlement, a bill of exceptions in the foregoing case, of which bill of exceptions the foregoing is a copy.

A. S. WORTHINGTON,

*Attorney for Frederick A. Hyde.*

R. GOLDEN DONALDSON,

*Attorney for Joost H. Schneider.*

Service of copy of foregoing notice and of the bill of exceptions referred to therein admitted this 5th day of April, 1909.

DANIEL W. BAKER,

*Attorney for the United States  
for the District of Columbia.*

1542 *Directions to Clerk for Preparation of Transcript of Record.*

Filed November 22, 1909.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

No. 24141, Crim. Doc.

UNITED STATES

*vs.*

FREDERICK A. HYDE et al.

To the Clerk of the Supreme Court of the District of Columbia:

Pursuant to paragraph "g" of rule V of the Court of Appeals of this District, we hereby designate the following as the parts of the record in the above entitled case which we desire to be included in the transcript which you are now preparing, pursuant to the appeal heretofore taken by our clients in this case:

1. The indictment.
2. Demurrer of defendant No. 1 (Hyde).
3. Order overruling demurrer (Minutes 41, page 166). Opinion of Court filed January 2nd, 1906.
4. Order of Court of Appeals allowing special appeal (filed January 25th, 1906).
5. Mandate of Court of Appeals (filed April 27th, 1906).

6. Motion for bill of particulars, (filed July 9th, 1906), and affidavit & petition of F. A. Hyde filed July 11, 1906.
- 1543 7. Order granting motion (M. 41, p. 445).
8. Bill of particulars (filed Aug. 4, 1906).
9. Motion to amend bill of particulars (filed December 3rd, 1906).
10. Motion to amend bill of particulars granted (filed December 18th, 1906).
11. Leave to file amendment to bill of particulars (filed March 20, 1908). Amendment filed Mch. 20, 1908.
12. Plea in abatement of Hyde and Schneider (filed April 1st, 1908).
13. Demurrer to plea in abatement of defendants Hyde and Schneider (filed April 1, 1908).
14. Order sustaining demurrer (filed April 1, 1908).
15. Plea of defendant Hyde " "
16. Plea of defendant Schneider " "
17. Entries in minutes relating to the organization of the jury M. 44: 271, 272, 273, 274, 275, 276, 279 to 283 (omitting names of persons summoned and examined who did not serve on jury).
18. Verdict June 22nd, 1908 (M. 44, pp. 352-4).
19. Motion by defendant Hyde for new trial (filed June 26, 1908); and affidavit of A. S. Worthington, filed with motion.
20. Motion by defendant Hyde in arrest of judgment (filed June 26, 1908).
21. Motion by defendant Schneider for new trial and affidavit of R. Golden Donaldson filed with motion (filed June 26, 1908).
22. Motion by defendant Schneider in arrest of judgment 1544 (filed June 26, 1908).
23. Order continuing till October Term the motions for new trial and in arrest of judgment (M. 44, p. 370).
24. Order prolonging term (M. 44, p. 437).
25. Motion to examine jurors (filed Oct. 27, 1908).
26. Motions for new trial and in arrest of judgment &c. argued and submitted and term further prolonged (M. 44, page 496).
27. Opinion of court (filed Nov. 3, 1908).
28. Order overruling above motions (M. 45, p. 11).
29. Order overruling motions in arrest, sentence, appeal, fixing of bail &c. (M. 45, pp. 65 to 67).
30. Appeal bonds approved and filed Dec. 22, 1908.
- MEMO.—Time for submitting bill of exceptions duly extended from time to time to and including November 4th, 1909.
- MEMO.—Time for filing transcript in Court of Appeals duly extended from time to time to and including December 1st, 1909.
- Bill of Exceptions.
- This designation.

A. S. WORTHINGTON,

*Attorney for Frederick A. Hyde,*

R. GOLDEN DONALDSON,

*Attorney for Joseph H. Schneider,*

Service of copy of foregoing designation acknowledged this 22nd day of November, 1909.

DANIEL W. BAKER.

1545 *Additional Designation of Record.*

Filed November 30, 1909.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

No. 24141, Crim. Doc.

UNITED STATES

vs.

FREDERICK A. HYDE et al.

To the Clerk of the Supreme Court of the District of Columbia:

In addition to the record as designated by counsel for the appellants, the United States, Appellee, hereby designates the following as a part of the record which it desires to be included in the transcript you are now preparing:

Affidavit of Daniel W. Baker, United States Attorney, in opposition to the motion for a bill of particulars, filed July 24, 1906.

DANIEL W. BAKER,

*U. S. Attorney.*

I consent

A. S. WORTHINGTON,

*Att'y for Def't Hyde.*

So do I

R. GOLDEN DONALDSON,

*Att'y for Def't Schneider.*

November 30, 1909.

1546 *Affidavit of Daniel W. Baker, U. S. Attorney, in Opposition to Motion for Bill of Particulars.*

Filed July 24, 1906.

In the Supreme Court of the District of Columbia.

No. 24141, Criminal Docket.

THE UNITED STATES

vs.

FREDERICK A. HYDE, JOHN A. BENSON, HENRY P. DIMOND, JOOST H. SCHNEIDER.

DISTRICT OF COLUMBIA, ss:

On behalf of the United States, the undersigned being duly sworn, deposes and says:

That the conspiracy charged in the indictment embraces two

classes of persons through whom, and two methods whereby, school lands were to be and were fraudulently obtained from the States of California and Oregon, respectively, by and on behalf of the defendants Hyde and Benson, namely:

(1) By making and filing with the proper authorities of said States respectively applications for the purchase of school lands, and assignments of the same, and of the certificates of purchase thereof, in the names of fictitious persons, which applications were supported by what purported to be the affidavits of the applicants, as real persons, whereas in truth and in fact the applicants were fictitious persons and the affidavits were by fictitious persons and were not the affidavits of real persons or affidavits sworn to by any person, but were forged, false, and fraudulent affidavits; and

(2) By making and filing with the proper authorities of said States respectively applications for the purchase of school lands, and assignments of the same, and of the certificates of purchase thereof, in the names of persons not really desiring, and not qualified, to purchase school lands, (the use of which names for such purposes the said Hyde and Benson procured by paying and causing to be paid to such persons respectively small sums of money, and by falsely representing and causing to be represented to some of such persons that they were merely disposing of their respective rights to purchase school lands)—which applications were supported by false and fraudulent affidavits, in this that they purported to be the *bona fide* sworn affidavits of the applicants whose names were signed thereto, whereas in truth and in fact such affidavits were not the *bona fide* sworn affidavits of the applicants whose names were signed thereto, because they stated that the affiants therein were persons qualified under the laws of the said State of California, or of the said State of Oregon, as the case might be, to make such applications and to purchase such lands by reason, amongst other things, of their intending to purchase such lands in good faith and for their own benefit respectively and of their having made no contract or agreement to sell the same, whereas in truth and in fact none of such real persons intended to purchase such school lands in good faith for his own use or benefit at all, but was either knowingly aiding and assisting the said Hyde and Benson in their said fraudulent practice or innocently acting upon their said false representations; and because also such affidavits were not in truth and in fact ever sworn to at all by any of the persons whose names were signed thereto.

The conspiracy charged in the indictment does not make it incumbent upon the United States to state or prove whether school lands described in the several counts of the indictment were obtained upon applications to purchase filed in the names of fictitious persons, or upon applications to purchase filed in the names of real persons. In fact, if the United States were compelled to particularize in many counts in the indictment it might state that it expected to show that the parties were fictitious, when in truth and in fact the defendants



might produce the real parties, the applications of which were as fraudulent as the applications filed in the names of fictitious persons; that the attorneys representing the defendant Hyde called on affiant and requested that affiant state in a bill of particulars which applications the Government claimed were made in the names of real persons and which applications were made in the names of fictitious persons. In reply thereto a letter dated July 10, 1906, was sent to the attorneys of Frederick A. Hyde and John A. Benson, defendants herein, as follows:

1549

"JULY 10, 1906.

A. S. Worthington, Esq., R. Golden Donaldson, Esq., Attorneys for Frederick A. Hyde. R. Golden Donaldson, Esq., of Counsel for John A. Benson, Washington, D. C.

DEAR SIRS: In relation to the case of the United States vs. Hyde et al., Criminal Docket No. 24,141, I desire to state:

That the conspiracy charged in the indictment embraces two classes of persons through whom, and two methods whereby, school lands were to be and were fraudulently obtained from the States of California and Oregon, respectively, by and on behalf of the defendants Hyde and Benson, namely:

(1) By making and filing with the proper authorities of said states respectively applications for the purchase of school lands, and assignments of the same, and of the certificates of purchase thereof, in the names of fictitious persons, which applications were supported by what purported to be the affidavits of the applicants, as real persons, whereas in truth and in fact the applicants were fictitious persons and the affidavits were by fictitious persons and were not the affidavits of real persons or affidavits sworn to by any person, but were forged, false and fraudulent affidavits; and

(2) By making and filing with the proper authorities of said states respectively applications for the purchase of school lands, and assignments of the same, and of the certificates of purchase

thereof, in the names of persons not really desiring, and not  
1550 qualified, to purchase school lands, (the use of which names for such purposes the said Hyde and Benson procured by paying and causing to be paid such persons respectively small sums of money, and by falsely representing and causing to be represented to some of such persons that they were merely disposing of their respective rights to purchase school lands)—which applications were supported by false and fraudulent affidavits, in this, that they purported to be the bona fide sworn affidavits of the applicants whose names were signed thereto, whereas in truth and in fact such affidavits were not bona fide sworn affidavits of the applicants whose names were signed thereto, because they stated that the affiants therein were persons qualified under the laws of the said State of California, or of the said State of Oregon, as the case might be, to make such applications and to purchase such lands by reason, amongst other things, of their intending to purchase such lands in good faith and for their own benefit respectively and of their having made no contract or agreement to sell the same, whereas in truth and

in fact none of such real persons intended to purchase such school lands in good faith for his own use or benefit at all, but was either knowingly aiding and assisting the said Hyde and Benson in their said fraudulent practice or innocently acting upon their said false representations; and because also such affidavits were not in truth and in fact ever sworn to at all by any of the persons whose names were signed thereto.

That as to the school lands described in the first, seventh, ninth, tenth, twelfth, thirteenth, sixteenth, eighteenth, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-seventh, 1551 twenty-ninth, thirtieth, thirty-first, thirty-second and thirty-fourth counts of the indictment, the United States will not claim at the trial that the state titles to any of such lands were obtained upon applications to purchase filed in the names of fictitious persons, in the manner described as to the first class above mentioned, but will claim that such lands were obtained upon applications to purchase filed in the names of real persons not really desiring, and not qualified, to purchase the same, in the manner and by the methods described as to the second class above mentioned, and that such real persons were not qualified to purchase such school lands because they stated in their affidavits filed in support of their applications to purchase that they intended to purchase such school lands in good faith for their own benefit respectively, and had made no contract or agreement to sell the same, while in truth and in fact none of such real persons intended to purchase such school lands in good faith for his own use or benefit at all, and the statements in their said affidavits were in this respect false, and the affidavits were not the bona fide affidavits of such real persons whose names were signed thereto, and also because such affidavits were not in truth and in fact ever sworn to at all by any of such persons; and it will not be claimed at the trial as to such counts that such real persons were not residents of the State of California, or of the State of Oregon, as the case might be, or that they were not citizens of the United States.

That as to all the other counts of the indictment, excepting those 1552 numbered from thirty-five to forty-two, inclusive, and the one numbered thirty-three (as to which thirty-third count no evidence will be offered at the trial and no claim will be made in respect thereof), the Government is unable to state whether the school lands described in such counts were obtained upon applications to purchase filed in the names of fictitious persons, or upon applications to purchase filed in the names of real persons, that is, whether such lands were obtained in the manner described as to the first class, or in the manner described as to the second class, above mentioned; and the Government is likewise unable to state as to the school lands described in such counts whether the applicants to purchase, if real persons, were residents of the State of California or of the State of Oregon, as the case might be, or were citizens of the United States or not.

Respectfully,

DANIEL W. BAKER,

*United States Attorney."*

That as to each and all of the counts of the indictment from the first to the thirty-fourth, inclusive, the names of the applicants to purchase the school lands therein described, whether fictitious or real, and the names of the persons, whether fictitious or real, to whom the state titles to such lands were issued are all shown by the records of the several purchases on file in the State Land Office of the States of California and Oregon, respectively, which records are public, and accessible alike to defendants and to the United States.

1553 That the names of all the persons, fictitious, or real, directly connected with the purchases of the school lands described in the several counts of the indictment from the first to the thirty-fourth, inclusive, and with the various transfers of such lands, and with the relinquishment thereof to the United States, and with the selections of public lands of the United States in exchange for such school lands, and the names of the Notaries Public or other officers before whom any documents or papers connected with such purchases, transfers, relinquishments, or selections, purport to have been verified, executed, or acknowledged, all appear by the records of such purchases on file in the State Land Offices of the State of California and Oregon, respectively, or by the records of such selections on file in the General Land Office of the United States in this District, all of which records are public, and accessible alike to the defendants and to the United States.

Affiant further states upon information that the transactions by defendants Hyde and Benson in pursuance of the fraudulent practice charged in the indictment were very numerous and extensive, and involved hundreds of thousands of acres of school lands in the States of California and Oregon, and an equal number of acres of the public lands of the United States selected in exchange for such school lands under the Forest Reserve Act of June 4, 1897; but affiant says that the fact that such transactions were so numerous and extensive furnishes no reason why the Government should be required to elect upon what count or counts of the indictment it will rely, or to state in advance of the trial what evidence will be introduced as to any one or more of such transactions, or the

1554 number of such transactions as to which evidence will be introduced. It will be open to the Government, and it will be not only the Government's right but its duty, to introduce evidence as to all such transactions, and the Government should not be circumscribed or restricted as to the evidence relating to such transactions, as defendants Hyde and Benson ask to be done by this Court in their affidavits filed in this case, or in any other manner. It is the defendants' fault that their said transactions have been so numerous and extensive, and they can have no just cause to complain that the Government has, and will claim at the trial, the right to introduce evidence as to all such transactions.

Affiant is informed that the profits to defendants accruing from their said numerous and extensive transactions under the said fraudulent practice have been very large, amounting to many hundreds of thousands of dollars, and he says that the expense of taking their testimony in California and Oregon, or of producing their witnesses

the trial, will not be a hardship upon them as claimed in their said affidavits, but will be an insignificant matter as compared with their large illegal profits in their said fraudulent business, as aforesaid.

The conspiracy charged, as in substance stated by the Court of Appeals of this District in construing the indictment, was a conspiracy to defraud the United States of public lands in general, and not of any particular tract or tracts of land, and from the very nature of such conspiracy, embracing the fraudulent practice of defendants set forth in the indictment and continuing for a number of years, the Government's evidence must necessarily relate in great part to the conspiracy as a whole, and to all the various transactions of defendants constituting such fraudulent practice, and as to such evidence it would be impossible for the Government to distinguish parts thereof as applying to any particular tract or tracts of land and other parts as applying to other tracts of land; and affiant says that to limit the Government in its proof to evidence relating only to particular tracts of land, be they few or many, or whether described in the indictment or not, would be to exclude legal evidence of the conspiracy from the consideration of the court and jury—evidence upon which the Government has the right to rely and must rely to sustain the indictment—with the result that the ends of justice might be thereby defeated.

DANIEL W. BAKER,

*Attorney of the United States in and for the  
District of Columbia.*

I, Daniel W. Baker, Attorney of the United States in and for the District of Columbia, upon oath state that I have read the foregoing statement by me subscribed and know the contents thereof, that the matters and facts therein stated of my own knowledge are true, and the matters and facts therein stated upon information and belief I believe to be true.

DANIEL W. BAKER.

Subscribed and sworn to before me this 24<sup>th</sup> day of July, A. D., 1906.

JOHN R. YOUNG, *Clerk.*

By WMS. F. LEMON,

*Ass't Clerk.*

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 1555, both inclusive, (comprised in Volumes I and II, respectively), to be a true and correct transcript of the record according to directions of counsel herein filed, copies of which are made part of this transcript, in Criminal Cause No. 24141, United States vs. Frederick

A. Hyde, et al., as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 30th day of November A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia Supreme Court. No. 2097. Frederick A. Hyde et al., appellants, vs. United States of America. Court of Appeals, District of Columbia. Filed Dec. 1, 1909. Henry W. Hodges, clerk.

865

Friday, April 15th, A. D. 1910.

No. 2097.

FREDERICK A. HYDE and JOOST H. SCHNEIDER, Appellants,  
vs.  
UNITED STATES OF AMERICA.

On motion each side is allowed two hours' additional time in the argument.

The argument in the above entitled cause was commenced by Mr. A. S. Worthington, attorney for the appellants, and was continued by Mr. A. B. Pugh, attorney for the appellee.

Monday, April 18th, A. D. 1910.

No. 2097.

FREDERICK A. HYDE and JOOST H. SCHNEIDER, Appellants,  
vs.  
UNITED STATES OF AMERICA.

The argument in the above entitled cause was continued by Messrs. A. B. Pugh and D. W. Baker, attorneys for the appellee, and was concluded by Mr. A. S. Worthington, attorney for the appellants.

866

No. 2097.

FREDERICK A. HYDE and JOOST H. SCHNEIDER, Appellants,  
vs.  
UNITED STATES OF AMERICA.

*Opinion.*

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The indictment in this case presented in the Supreme Court of the District of Columbia, February 17, 1904, charged John A. Benson, Frederick A. Hyde, Joost H. Schneider, and Henry P. Diamond, with entering into a conspiracy to defraud the United States.

The general object of the conspiracy as alleged was to obtain titles to land from the United States through fraudulent practices. The indictment is a very long one—consisting of ninety-four printed pages, and contains forty-two counts. The same conspiracy is charged throughout and the several counts allege different overt acts in furtherance of the same.

An act of Congress passed in 1891 empowered the President to set apart in the several States and Territories public lands belonging to the United States having forests thereon, as public reservations.

An act of June 4th, 1897, provided that where a tract covered by a bona fide claim, or by patent is enclosed in the limits of a forest reservation, the owner may relinquish the same to the United States and select in lieu thereof vacant land open to settlement, not exceeding in area the tract covered by his claim or patent.

Under a former law Congress had granted to the States of Oregon and California for the benefit of public schools, sections 16 and 36 in the surveys of public lands according to a system then in vogue. The titles to such sections passed by terms of the act to the said States, without the issue of a patent. Consequently such lands purchased from said States could be surrendered to the United States under the act of 1897, and certificates obtained in lieu thereof for location elsewhere.

The statutes of Oregon and California provided that such school lands might be purchased by any citizen intending to purchase the same in good faith for his own benefit and who has made no contract or agreement to sell the same. The affidavit of the applicant was required to show these essential conditions and any false statement would defeat the right to purchase. The maximum purchase allowed in California was 340 acres; in Oregon 320 acres.

After reciting these acts, the indictment charges that Hyde and Benson were engaged in the city of San Francisco, California, in the business of acquiring title to public lands of the United States, outside of reservations, in exchange for school lands within said reservations; that Schneider and Diamond were employees of Hyde and Benson in the conduct of that business; that all of said parties conspired together to defraud the United States out of large tracts of lands that were open to selection in lieu of lands surrendered within the reservations.

It is alleged that Hyde and Benson were to procure the use of names of applicants for the purchase of school lands from said State, by paying them small sums of money and by falsely representing to some of them that they were merely disposing of their rights to purchase said school lands. Further, by supporting such applications with fraudulent and false affidavits, in that they would purport to be bona fide affidavits sworn to by the persons whose names were signed thereto; whereas in fact, they would not be bona fide or sworn affidavits, because in the first place, they would state that the affiants were persons qualified under the laws of the States, intending to purchase in good faith and for their own benefit, and who had entered into no contract or agreement of sale; while in fact they would not intend to purchase in good faith, or for their own benefit at all, but would be knowingly aiding Hyde and Benson in their said fraudulent practice, or else innocently acting upon their said false representations; because, also some of the applications would not, in fact, have been sworn to by the persons whose names were signed thereto.

It is further alleged that part of the scheme of Hyde and Benson was to procure in advance of said pretended purchases, transfers, and conveyances to the lands so applied for and to such public lands of the United States as should be selected in exchange for said school

lands; they (Hyde and Benson), at the time of relinquishing said titles to the United States in exchange for public lands well knowing that they had been fraudulently obtained, and intending to defraud the United States out of the possession and use of said public lands.

The overt acts charged in execution of said general conspiracy specify many fraudulent applications made for the purchase of said school lands, false affidavits made in the prosecution thereof, divers acts done and papers filed in the General Land Office of the United States in the Department of the Interior, in the city of Washington, in the District of Columbia; other acts of deception and fraud done in said department in furtherance of the objects of said conspiracy in procuring titles, as well as the bribery of certain employees of the United States therein.

After long delay the parties were brought before the court in the District of Columbia to answer this indictment. A demurrer to the indictment, by Hyde, was overruled November 13, 1905, and the action of the court was affirmed on special appeal to this court April 6, 1906. *Hyde v. U. S.*, 27 App. D. C., 362.

The next proceeding was an application by both Hyde and Benson to require the United States to file a bill of particulars, which was ordered July 24th, 1906, and complied with. On April 1, 1908, Hyde and Schneider filed pleas in abatement to the said indictment. These were excepted to by the district attorney, whose exceptions were sustained. The parties were then brought to trial before a jury. Benson and Diamond were acquitted. Hyde and Schneider were found guilty on each and every count in the indictment, save counts 29 and 33, on which the court had directed an acquittal.

The question raised by the demurrer to the indictment was settled on the special appeal before referred to.

The second and third assignments of error are founded on exceptions taken to the order overruling the pleas in abatement. These relate to the organization of the grand jury. By the terms of the Code of the District, the clerk of the Supreme Court of the District of Columbia, the marshal, and the collector of taxes are constituted a commission to, from time to time, make a list of jurors for service in said court; the same to be selected as nearly as may be from the citizens in different parts of the District. The names of all persons on the list shall be written on a separate and similar piece of paper, so folded that the names can not be seen, and placed in a box provided for the purpose. Such box shall be sealed and turned over to the clerk of the Supreme Court for safe-keeping.

The term of service of a grand juror in a criminal court shall begin with each term of the same and end with such, unless the jury shall be sooner discharged. At least ten days before the commencement of each term of the criminal court, the names of twenty-three persons required for service as grand jurors in said court shall be drawn from the box by the clerk, who shall publicly break the seal of the jury box for the purpose.

The pleas alleged the following facts substantially in regard to the selection of the grand jury that presented this indictment: After reciting the general provisions aforesaid, it is alleged that on Novem-



ber 16th, 1903, the said commission made an order appointing one James A. Hartsock clerk of said commission, giving him the right of access to the box containing the names of such jurors. That thereafter, about the 10th of January, 1904, said Hartsock, pursuant to said authority, and by consent of the clerk, who had custody of the box, and unaccompanied by any other person, took the  
868 said box in the court-house and opened it and took therefrom all the pieces of paper containing the names of the jurors, and from day to day during several successive days, replaced in said box the papers containing such names, only, as he deemed fit and proper to be replaced, and thereupon returned the said box to the custody of the clerk. That upon January 20, 1904, the names of twenty-three persons required to serve as grand jurors in said court were drawn from said box pursuant to the provisions of the Code, and the grand jury whose term of service began on the first Tuesday of February, 1904, was composed of persons whose names were drawn from said box after said Hartsock was given and had exercised control over the contents of said box, as herein above set forth; and said grand jury found and returned said indictment in said case.

It further alleges that between the time said Hartsock obtained access to said box and between the time the names of the persons constituting the grand jury were drawn therefrom, as aforesaid, no papers containing names of persons were placed in said box by said commission, or by any member thereof, or by any person acting in behalf of said commission, but was composed only of the names left in said box by said James A. Hartsock; wherefore, the grand jury, which returned the indictment in this case was not a legal body and had no right to return the indictments against the defendants.

The district attorney demurred to these pleas on the following grounds: First, that they were not filed within a reasonable time; second, that they do not show that any person or persons on said jury had not the right to be there; third, that said commission had the right to have assistance in the placing of names in the boxes and in the withdrawing of surplus names in the boxes; fourth, that said pleas are uncertain, indefinite, and state conclusions of law; fifth, they are filed without leave of the court; sixth, such pleas allege no facts that show injuries or damage to the defendants. This demurrer was sustained, exception to the order being taken.

For obvious reasons, objections to the grand jury ought to be taken at the earliest reasonable moment; and it is well settled that where they disclose irregularities merely in the proceeding of forming the panel they must be presented by challenge, motion to quash, or plea in abatement, in due order and without unnecessary delay. *Gale v. U. S.*, 109 U. S., 65-70; *Agnew v. U. S.*, 165 U. S., 3-44. The only exception to this strict rule of diligence seems to be where the objection shows a violation of some positive requirement of the statute, so that there would be no legally selected jury at all. *Rodriguez v. U. S.*, 198 U. S., 156-164; *Gale v. U. S.*, *supra*.

The question presented by the facts alleged in the pleas is, whether the action of the secretary of the jury commissioners in withdrawing from the box some of the names properly placed therein was

such as to destroy the legality of the jury. It appears that the names in the box were placed therein by the proper officers. The secretary withdrew some of these names from the box. He added no new names, but simply diminished the number from which the jury was subsequently drawn. He had no authority to do this, nor could he be invested with such authority by the officers charged with the duty of supplying names in the box; yet, as he added no additional names, those left in the box were lawful jurors. The defendants do not complain that the grand jury was made up of persons whose names were not lawfully in the box, but simply that the names of some persons who might have been drawn upon, upon the jury, had been unlawfully abstracted. The defendants had no right to have any particular person drawn, and there is nothing in the pleas to indicate that they suffered any prejudice what-so-ever by the withdrawal of some of the names. It is not alleged that any improperly selected or disqualified person was drawn upon the jury. The action of the secretary was a serious irregularity, it is true, but it did not necessarily render the grand jury an illegal body. We are of the opinion that the pleas came too late and that there was no error in sustaining the exceptions thereto.

The fourth and fifth assignments go to the question of jurisdiction of the court of the offense proved. The contention, presented on the motions to direct a verdict of acquittal and on exceptions to the charge, is that, notwithstanding the evidence may have tended to establish a conspiracy entered into in the States of California and Oregon, there was none to show that it had been entered into in the District of Columbia; and the commission of an act in the said District by one of the conspirators, in furtherance thereof, can not confer jurisdiction of the offense—of the conspiracy itself.

The opposing view maintained by the court is stated in the charge substantially to this effect: If the defendants actually conspired to defraud the United States, as charged in the indictment, and to accomplish their purpose by doing or having done in the District of Columbia any one of the things alleged as to be done there, and any of such things were done there pursuant to said agreement, then it is the same as if they had all been there and actually engaged in doing the same. As far as such acts are concerned they are to be treated as having been performed there by the defendants in person. If performed for the purpose of carrying out the agreement, said agreement is contained in the acts, and the conspiracy is there as truly as if all of the defendants were there in person doing these things with the common mind and purpose which contemplated them. While the question presented was not actually determined by the Supreme Court of the United States when this indictment was before it in the proceedings for the extradition of Hyde, it was said that there are many authorities to the effect that an indictment will lie for conspiracy in the jurisdiction where an act in furtherance thereof may have been committed. *Hyde v. Shine*, 199 U. S., 62-76. To this effect are the following decisions: *King v. Briscoe*, 1 East Rep., 161; *People v. Mather*, 1 Wend., 229-259; *Com. v. Gillespie*, 7 S. & R., 469-478; *Com. v. Corlies*, 3 Brewster (Pa.),

575-578; *Com. v. Bartilson*, 85 Pa. St., 482-489; *Noyes v. States*, 41 N. J. L., 418; *People v. Arnold*, 46 Mich., 268-275; *Bloomer v. State*, 48 Md., 521-535; *People v. Adams*, 3 Denio, 190-206; *State v. Grady*, 34 Conn., 118; *Ex parte Rogers*, 10 Tex. App., 655; *Ins. Co. v. State*, 75 Miss., 24-34. In the foregoing cases the conspiracy itself was a complete offense; no act in furtherance of it being necessary to make it punishable.

The doctrine maintained is, we think, for a stronger reason applicable to the offense of conspiracy as defined in section 869 5440, R. S. By that the conspiracy is the gist of the offense and must be pleaded with fullness and certainty, but it does not amount to a punishable offense until some act shall have been committed in furtherance of it. It is the conspiracy, plus such act, that constitutes the offense. Hence, while the indictment would lie in the jurisdiction where the agreement was actually entered into, an act there or elsewhere would be necessary to conviction. Where the overt act is committed by one of the parties or by an agent, all are regarded as being personally present with him and then and there renewing and prosecuting the original agreement. *Lorenz v. U. S.*, 24 App. D. C., 337-387; *See U. S. v. Rindskopf*, 6 Bissell, 259-268; *U. S. v. Newton*, 52 Fed., 275-283; *Arnold v. Weil*, 157 Fed., 105-108; *Robinson v. U. S.*, 172 Fed., 105, 108.

The sixth assignment of error is founded on an exception taken to the refusal of the court to give the twelfth special instruction asked by the defendants, as follows:

"If the jury are not satisfied by the evidence beyond a reasonable doubt that the defendant Diamond in filing or causing to be filed in the office of the Commissioner of the General Land Office in Washington, the several papers which are set forth as overt acts in counts 2 to 14; 15 to 21; 23 to 28; and 30 to 34—all inclusive—of the indictment, was in collusion with one or more of the defendants in attempting to defraud the United States by the means set forth in the indictment, or some such means, they will render a verdict of not guilty as to all of the defendants as to each of the said counts."

In disposing of this instruction it must be noted that in several of the counts it is charged that evidence was offered tending to prove that Hyde himself executed certain papers necessary to procure the exchange of certain land, mailing the same to the General Land Office at Washington, D. C., where they were required to be acted upon. So far then as he is concerned and Schneider with him, as they pertain to certain purchases applied for by Schneider in fictitious names, apparently, these constituted the performance of material acts in furtherance of the conspiracy in the District of Columbia, and the completion of the matter there. *Paliser v. U. S.*, 136 U. S., 257-265; *Horner v. U. S.*, 113 U. S., 207; *Benson v. Henkel*, 198 U. S., 1-15; *Burton v. U. S.*, 202 U. S., 314-387; *U. S. v. Thayer*, 209 U. S., 39-44; *Haas v. Henkel*, 216 U. S., 462-475.

But assuming that the acts in the District of Columbia were performed by Diamond alone, and that he was an innocent agent of the criminal principals; that is to say, that he carried out the plans of Hyde and his co-conspirators without knowledge of their criminal

scheme; were they liable for his acts performed by their procurement and direction? They were acting through him and it was their guilty knowledge and intent that gave character to the act, not his. *King v. Briscoe*, 4 East, 164; *Com. v. Corlies*, 3 Brewster (Pa.), 575-578; *Noyes v. State*, 41 N. J. L., 418; *People v. Adams*, 3 Denio, 190-206.

The seventh assignment of error relates directly to Schneider and will be considered with his special exceptions. The eighth is unimportant.

The ninth and tenth assignments of error are based on the refusal of the court to grant the tenth instruction asked by the defendants as follows:

"Unless the jury are satisfied by the evidence beyond a reasonable doubt that the defendants, Hyde and Benson, are both guilty as charged in the indictment on trial, they should render a verdict of not guilty as to all of the defendants."

All four parties were charged with conspiracy and it was sufficient to show that any two of them had entered into the same. Hyde was found guilty as was Schneider and it was not necessary to the guilt of either that Benson be found guilty also.

The eleventh assignment of error is on an exception taken to the following charge of the court:

"You will remember that some evidence has been introduced against each defendant, which was not admitted as against the others. For this reason it is possible that there may be a verdict against one only of the defendants, although in fact he could not be guilty alone. That necessarily results because each one is to be tried on the evidence which was admitted against him. As to most of the evidence, it was admitted against all; but there was some evidence—for instance, the alleged confession of Schneider—which was admitted against him only. Now if the evidence, which was admitted against Schneider was sufficient to satisfy you that he did conspire with the other defendants, or some of them, as the court shall charge you may find, then you might convict him, although when you come to take the evidence against defendants, and to consider what only was admitted against them, you might not find sufficient evidence that had been admitted against them to convict them. The same may be true as against Diamond, against whom a great deal of evidence was admitted that was not received against the other defendants. So it is true there may be a verdict against any of the defendants, whether one or more, as to whom the evidence submitted, received against him or them, proves that he or they conspired as charged, provided an overt act is also proved as charged."

The exception to this as to the defendant Hyde was that it was not competent in any case where two or more persons are charged with conspiracy, and are all on trial, to find a verdict against one of them only; and secondly, that as to the defendant Hyde there was no evidence in the case that would justify a verdict against him alone, even if the principle upon which the court announced that doctrine to the jury is, in the abstract, correct.

It would seem to be unnecessary to discuss the proposition em-

braced in this charge as it is of no practical importance, since two of the defendants were actually found guilty by the jury.

The fact that Benson was acquitted renders the twelfth assignment, founded on the exclusion of certain testimony of witness Lavenson, immaterial. It had no bearing upon the cases of Hyde and Schneider.

The thirteenth, fourteenth, fifteenth, sixteenth and seventeenth assignments of error have been presented together by counsel under the following propositions in their brief. These are on exceptions to the action of the court in allowing the district attorney on direct examination of his own witnesses to examine them as to previous statements they had made to the representatives of the Government; and in permitting counsel for the Government in the final argument to the jury to use such testimony as to prior statements

870 of the witnesses as evidence tending to show the truth of the statement, and in interrupting counsel for the defendant Hyde in his argument to the jury when he was claiming, in substance, that the use made by the Government, during the trial, of prior statements of its own witnesses practically deprived the defendants of the benefit of that provision of the Sixth Amendment to the Constitution, which gives the accused in a criminal trial the right to be confronted by witnesses against him.

(1) The first exception relates to the examination of the witness Valk. This witness on his direct examination had testified that he did not recollect having had any conversation with Benson in regard to forest reserves. The district attorney said:

"Now let me see if I can not refresh your memory. Do you recollect going over the memorandum of your testimony with me a day or two ago."

Witness answered that he did.

An objection was made by the defendant to the district attorney stating that he asked the question for the purpose of refreshing the memory of the witness. The court permitted the examination to proceed. The witness then admitted that he had stated to the district attorney that Benson had said something to him about forest reserves and that he, Valk, had told Benson that that was outside of his jurisdiction.

As this evidence related solely to Benson and to no one else it seems to be of no importance, inasmuch as he was acquitted.

(2) The witness Holsinger had testified to seeing Schneider in Arizona in the fall of 1902 and that Schneider told him that Allen, superintendent of forests, was invited to come to the office and given the privileges of the same and that he usually entered by the private door to Benson's office. The district attorney showed the witness his report of that interview and asked him whether it was at Benson's office or at Hyde's that Allen called. Counsel for the defendant objected. The district attorney said: "I will read the report and ask him to refresh his memory from reading the report." This was objected to by defendant, because the witness had testified that the report was made six days after the witness's interview with Schneider and that, therefore, it was not competent for the witness to refresh

his memory by it. The court allowed Holsinger to read his report and to state that his memory was refreshed by it, and to say that when he spoke of Allen coming to Benson's office he meant Hyde's; that when he spoke of Benson's office he had Hyde's office in mind; that he used the names interchangeably, because Schneider told him they were one and the same concern, and he did not know that Benson had a separate office. The memorandum of the witness was made so shortly after the conversation with Schneider as to be practically contemporary, and hence was admissible for the purpose of refreshing his memory. *Putnam v. U. S.*, 162 U. S., 687-694. The matter is one largely within the discretion of the court. *Putnam v. U. S.*, *supra*; *St. Clair v. U. S.*, 154 U. S., 134-150.

(3) The witness, Tillie A. Fleischauer, was evidently unfriendly to the Government. In testifying to a conversation with Benson in regard to obtaining a written statement from her regarding her connection with one of the land transactions, she made quite a different statement from that she had previously made to a Government agent. He had reduced the same to writing obtaining her signature thereto. Her testimony concerning the statements of Benson was at some length. She was asked the following question by the district attorney:

"Did you not state to Mr. Neuhausen as follows: 'One day not more than two years ago, Mr. Benson called me up on the telephone at my residence, and made an appointment to meet me at the corner of Montgomery and Sacramento strs. He did not state what he wanted to see me about, but when he met me on the street corner he asked me to go to a notary on Montgomery str. and sign some papers.' Did you make that statement to Mr. Neuhausen?"

"A. Yes.

"Q. Is it true?"

"A. Yes, that is true.

"Q. And did you make the further statement: 'I went with Mr. Benson and signed the papers before the notary, but I have not the slightest idea what the nature of the paper was. I signed the papers because I did not wish to hurt Mr. Benson's feelings by declining to do so. I did not examine the papers at all and Mr. Benson did not tell me that they related to land.' Did you make that statement to Mr. Neuhausen?"

"A. Yes.

"Q. Is that so?"

"A. Yes."

Defendant's counsel asked the court to say to the jury what these statements were read for.

"The COURT: So far as any contradiction is concerned, this last, of course, is not a contradiction. She says now that the statement is true. She modifies her former testimony to that extent. She says these latter statements are true now, as I understand it. But I think there was a part of it that was a contradiction.

"DEFENDANT'S COUNSEL: I ask your honor to instruct the jury as to any statements which she made to Mr. Neuhausen, that she is allowed to state what she said to Mr. Neuhausen only for the purpose

of discrediting her and not for the purpose of showing that the statements she made to Mr. Neuhausen are true.

"The COURT: I think it stands like this: She was asked what she had said to Mr. Neuhausen, and what statements she had made and signed. So far as she says that, that was true. I allow that as refreshing her recollection about the matter. She remembers that she made a statement formerly to him, and now, on hearing it read and seeing it, she says was true. So far as it is a mere refreshment of her recollection. But where the statement that she formerly made to Mr. Neuhausen contradicts what she says here, it simply discredits her to that extent—either her memory or her veracity. And the fact that she said it to Mr. Neuhausen is not any evidence that it was true. That I understand to be the situation."

Other paragraphs were read to her from her statements to Neuhausen, which she now said were true.

The vexed question as to how far a witness may be contradicted, who has taken the party introducing him by surprise has been settled by the Code, section 1073a. To that extent it would be permissible to read her former statement to the witness. If she had adhered to her last statement, and denied that formerly made, it would have served to discredit her under that section. But instead of  
871 persisting in her denial the witness admitted the truth of her former statement. She simply made that former statement her evidence. The Code makes no provision for this, nor could it well do so. The witness having changed her testimony and now asserted the truth of the former statement, it goes to the jury for whatever it is worth, discredited as it necessarily was, by her contradictory statements.

This question, however does not seem to be a material one, so far as these parties are concerned, because it had application solely to Benson.

(4) Another exception was taken to the remarks made in the course of the argument by one of the counsel for the Government.

Counsel for the Government, in commenting upon the evidence of the witness, Thomas S. Burns, said that Burns was asked a question as to the manner in which he did business for John A. Benson. Having his memory refreshed by the statement read to him that he made to Mr. Neuhausen and going over the matter again in his mind, he admitted they were all true.

"Take this whole testimony and get at it what is the truth of the matter. All I want is nothing but the truth. If the witness is slow to testify, measure him by his manner. Get from him what he says, and weigh it to determine for yourselves what is true. That is your duty to every witness for or against the Government, and I am not denouncing my own witnesses by telling you that."

The district attorney interrupted to say that he admitted those statements were true and correct.

"COUNSEL FOR GOV'T: I know he did. That is what I am read him for.

"COUNSEL FOR DEFENDANT: I understand the court to admit that because it was simply a corroboration of what he testified to,

"The COURT: It was not quite that way.

"COUNSEL FOR DEFENDANT: I wish to take an exception to counsel being allowed to use the statement for any purpose, except for the purpose of showing the jury that the witness is not a credible witness.

"The COURT: The testimony is being used, as I understand, for the same purpose for which it was admitted, which I stated at the time. The court allowed his memory to be refreshed as to certain questions he had previously stated, and, on being reminded of them, he said that they were true, thereby making them a part of his testimony. It was only in effect a method of introducing that evidence, so that he made it his own, and verified it. The jury have nothing to do with that at all."

This statement, repeated to the jury by counsel, was what each witness, after he had it read to him, said was true. The question is practically the same as that disposed of above. The witness having declared the statement to be true, it was the proper subject of comment by counsel.

(5) Counsel for the defendant Hyde in the course of his argument, referred to the fact that many witnesses for the Government had come into court in chains, by reason of their having been tied down by affidavits made out of court to agents of the Government, and when any of the Government's witnesses who had been so tied down undertook to depart from their statements, they were thrust in their faces and they were examined as to whether such statements were not true. He then proceeded to argue that by this method of procedure the defendants were substantially deprived of their constitutional right to be confronted by the witnesses against them.

The court interrupting said that this was an impeachment of the court; and counsel said that he meant in substance and effect the defendants were so deprived of a constitutional right. The court said that was the same thing—a distinction without a difference. Counsel said that he did not mean to assume the functions of the court and to tell the jury that the Constitution of the United States had been violated, but that he did say that the "effect of what has taken place has been practically to deprive us of any benefit of that provision." The court then said that was the same thing; that it did not change it a particle, and that the court held that that was an improper argument. To which the defendants excepted.

It is plain that this was a comment upon the action of the court and not an argument on the weight of the evidence or the competency of a witness. It was practically an impeachment of the ruling of the court and was properly stopped.

The eighteenth, nineteenth and twentieth assignments of error, are on exceptions which relate to the action of the court alleged to be coercive of the jury in returning a verdict and to the exclusion of evidence relating to the conduct of the jury.

(1) The court had ordered the jury kept together during the trial, which lasted nearly three months. The case was submitted to the jury at — o'clock Friday, June 19th. Monday, June 22d, at 11.30 a. m. the jury returned and announced that they were unable to agree. The court instructed them to retire for further deliberation and make



another effort to agree upon a verdict, charging them, however, that should they render a verdict it must be one to which they all freely agreed; that the law would not recognize a coerced verdict, or one which was not the free expression of the views and opinions of the jurymen; and that if after another conscientious effort, the jury still fail to agree they should return to the court and so state. That it was not the purpose of the court to unduly prolong their deliberations and that if they could not conscientiously and freely agree upon a verdict they would be discharged.

At ten minutes before 3 o'clock in the afternoon of June 22d, the jury having been brought into the court room by direction of the court, the foreman was asked: "Have you been unable to agree?"

"The FOREMAN: We have been unable to agree, sir.

"The COURT: I have one further suggestion to make to you after consultation with counsel. I think I ought to tell you that under the law, as I have held it in this case, and which is settled as the law of this case for this trial, it is possible for you to clear up the record as to part of the defendants, even though you should not be able to agree on others. If you can agree as to any one of the defendants, as to whether he is guilty or not guilty, you may do so. If there are any of the defendants as to whom you can say 'guilty,' or 'not guilty' and all agree, you may return such a verdict, as to such defendants; and as to those defendants touching whom you can not agree, you may so report.

"So that I will ask you to retire to your room and see if you can decide the case as to any of the defendants distinguishing carefully between the different counts of the indictment, especially 872 between the first thirty-four or thirty-five counts, which are outside of the bribery charges, and the last eight counts, I think, which deal with the bribery as overt acts.

"Begin, for instance, with the defendant Hyde and say as to the early counts, one by one, whether you find him guilty or not guilty; and then as to the bribery counts, as to those overt acts, whether you find him guilty on those, or not guilty, and so with each of the other defendants.

"It is possible that you may be able to relieve the docket as to some of the defendants, although you can not as to all.

"On the two counts, as directed, you will return a verdict of 'not guilty,' 29 and 33, I think, are the numbers.

"So I will ask you to retire and take up that question, and see if you can decide the case to that extent."

After some suggestions by counsel for defendants the court continued:

"In order that there may be no possible misunderstanding, I will remind you again that, of course, you can not convict under any count, without you find the conspiracy established, and the overt acts also; but you might find it as to one defendant on the evidence against him, whereas you could not find it as to the defendants on the evidence against them. But you will take up each count by itself, and remember that it involves the charge of conspiracy and the overt act—each one."

Shortly thereafter the jury agreed upon a verdict finding Hyde and Schneider guilty and Benson and Diamond not guilty. The trial had been long and tedious and it was proper for the court to give the jury every reasonable opportunity to agree upon a verdict as to one or all of the defendants. We observe nothing in the record of these proceedings to indicate the slightest attempt to coerce the jury.

(2) The twentieth ground of the motion sets up the misconduct of the jury. It is alleged, among other things, that their verdict against these defendants was the result of an agreement made in the jury room after the jury had retired to consider their verdict, between some of the jurors, whose judgment and opinion on all of the evidence was that all of the defendants should be convicted, and others of the jurors, whose judgment and opinion on the evidence was that all of the defendants should be acquitted, and which agreement was in substance, that if those of the jurors who were in favor of convicting the defendant Benson would join in a verdict of acquittal as to him, those who were in favor of acquitting the defendant Hyde would join in a verdict of conviction as to him; and that if those of the jurors whose opinion on the evidence was that all of the defendants should be convicted would vote for the acquittal of the defendant Diamond, those who were in favor of acquitting all of the defendants would vote for the conviction of the defendant Schneider.

Affidavits accompanied these motions to the effect that from information obtained partly from Gardner and Baruch, two of the jurors, the facts stated in the foregoing motion were learned. That both jurors declined to make a statement or affidavit of the fact.

The motion for a new trial was postponed until October. On October 27, 1908, the defendants Hyde and Schneider moved the court for leave to examine the jurors upon their oaths in regard to the charge aforesaid. This was denied.

It is the general rule founded on the soundest public policy that the testimony of jurors relating to the motives and reasons influencing their verdict will not be received. The only exception to this rule is where it relates to extraneous influences and external causes tending to prevent the exercise of deliberate and unbiased judgment. *Mattox v. U. S.*, 146 U. S., 140-148. The facts alleged in the motion do not bring it within the exception.

The twenty-first assignment is an exception taken to the refusal to permit certain inquiries of Ackerman, who was a dealer in land script and an attorney in the land department of the State of California. Having testified at some length relating to the dealings with Hyde and Benson in the purchase of lands in California reservations, Hyde sought to prove by him that it was the universal custom of land agents to have applicants make affidavits in regard to the character and occupation of the lands without personal knowledge. This was excluded. A custom can not be established in violation of law, and we fail to perceive how the misconduct of others would justify that of Hyde. For a like, and stronger reason, the twenty-second and twenty-third assignments are without

merit. Moreover, as the exception was to the refusal to permit counsel for Benson to argue to the jury a custom of notaries in California and Oregon to certify to acknowledgments and affidavits without the appearance of the party purporting to have executed the instruments, the exception passed out of the case with Benson's acquittal.

The twenty-fourth assignment questions a part of the charge relating to the character of titles acquired on the applications for State lands, which reads as follows: "How were these titles in fact obtained? Did the applicants who did make applications for them really apply for them for their own use and benefit alone; or were they applying for them because they were hired to do so by Hyde and Benson, or either of them, either directly or through Schneider or anybody else? And when they made the application, did they have that understanding with the defendants Hyde and Benson, or their agents, that they would turn them over to them? If that was the situation, then the titles as to the applicants, and as to those who had notice how they were acquired, were fraudulent against the State. The State had said: We will grant these lands only to those who apply for them for themselves, and not to anybody who applies for them to turn right over to somebody else, having an agreement with those other persons to turn them over, so that they are merely acting as tools or figure heads. That was the State statute. The State has said: We will not grant titles in that way; and if anyone undertakes to get titles in that way, they shall be invalid. And if that is the way they were obtained they are invalid." There can be no doubt that titles acquired in violation of the State statutes could be disaffirmed by the State and annulled in a proceeding for that purpose. *Hyde v. Shine*, 199 U. S., 62-80. The question was not whether the title, not having been assailed remained in the purchaser, but whether, notwithstanding, the State and the United States had been defrauded in the sense of the statute. "It is not essential that such a conspiracy

873 shall contemplate a financial loss or that one shall result

The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of the Government." *Haas v. Henkel*, 216 U. S., 462-479; *Hyde v. Shine*, 199 U. S., 62-81; U. S. v. Keitel, 211 U. S., 370-393.

The twenty-fifth assignment is on the refusal of the court to instruct the jury that applications for school lands were neither false nor fraudulent merely because the applicants did not have personal knowledge as to the character of the land or as to its non-occupancy. The statutes seem to contemplate that such affidavits shall be made of personal knowledge. *Ballinger v. Ness*, 33 App. D. C., 302-309. But the question is immaterial, because the applications were fraudulent by reason of the agreements for transfer.

The twenty-sixth and twenty-seventh assignments relate to the refusal of the court to withdraw from the jury evidence relating to the alleged forgery of the name of Elizabeth Diamond and another. Evidence had been given tending to show that said Diamond was a

fictitious person and that forgery had been committed in some applications for lands, and it was later announced by the Government that conviction would not be asked on those charges of forgery. Defendant's counsel then moved the court to withdraw all of such evidence from consideration, which was overruled, the court holding that the evidence would be admissible if the charges had not been in the indictment. We are of the opinion that these acts were so intimately connected with the others as to be admissible in proof of the common scheme to defraud the United States. *Ryan v. U. S.*, 26 App., 74-83; *Burge v. U. S.*, 524-537. *Idem*.

The twenty-eighth and twenty-ninth assignments are on exceptions to a part of the charge as invading the province of the jury. This related to certain letters of Diamond that had been given in evidence, and certain anonymous letters, which proof tended to show had been written by him. Without consuming space, without setting out the part of the charge excepted to, it is sufficient to say that the court referred to the letters as important in that there could be no mistake as to the words used, and the question was as to their meaning and intent; but took no question of fact from the determination of the jury. It seems that only Diamond, who was acquitted, could claim any prejudice from these expressions of the court; but we do not find that the court exceeded the latitude permissible in charging a jury in the United States courts. *Vicksburg, etc., R. R. Co. v. Putnam*, 118 U. S., 545-553; *U. S. v. Reading R. R. Co.*, 123 U. S., 113-114; *Simmons v. U. S.*, 142 U. S., 142-155; *Maxey v. U. S.*, 30 App. D. C., 63-78.

The thirtieth assignment relates to the confessions of Schneider, and embodies several propositions.

There had been evidence tending to show that Schneider was an employee in Hyde's office in the years 1897 and 1898 and that during the latter year he went to Oregon and there obtained applications for purchases of land as set out in the indictment. The evidence relating to the procurement of these, and Schneider's connection with Hyde was sufficient to warrant submission to the jury of the question whether he was cognizant of the fraudulent purposes of his employer Hyde, and cooperated with him in the execution of the same. Schneider remained in the employment of Hyde as manager of his ranch until December, 1901, when he left permanently. This leaving was more than three years before the finding of the indictment. There was no evidence as to his actual prosecution of the conspiracy within three years of the time of the indictment. That is there were no specific acts of performance by him. He was aware that the conspiracy was still active in its purposes and being pushed, and remained silent and did not do anything to show that he repudiated or abandoned the scheme until March or July, 1902, when he authorized his attorney Zadriekie to write the General Land Office, and also wrote letters himself, intimating the perpetration of frauds in the business of Hyde and Benson. Holsinger, the witness for the United States, testified that he was a special agent of the Land Office from 1897 to April, 1903, and having seen the letters of Schneider and his attorney referred

to above, went to Arizona in November, 1902, to investigate the matter. In an interview Schneider made a statement of the facts relating to the land schemes and practices of Hyde and Benson; giving a history of the operations, and said that there had been many fraudulent entries and that three-fourths of all of them were fraudulent. He told of being employed to procure persons to make entries, and in some instances of fabricating names. He named two fictitious persons, Jennie P. Blair and Elizabeth Diamond, and also told of certain United States special agents who were cooperating with Hyde, and also of certain notaries, who were engaged in taking acknowledgments, etc., in collusion with Hyde and Benson. He expressed anger with Hyde as he claimed he had treated him badly and had made great profits out of the matter and given him nothing.

William J. Burns also said he was an agent of the Land Office. First met Schneider at Tucson, Ariz., in 1903 and had conversations with him in presence of Corbett. Showed Schneider Holsinger's report of his statements, and also the aforesaid letters which he had with him at the time. The witness was asked what occurred between him and Schneider concerning these papers. Counsel for defendants objected. The district attorney stated the purpose was to prove that Schneider read the report made by Holsinger and admitted the truth of everything contained therein. Counsel for defendant objected to the evidence of Burns, as well as the witness Corbett, corroborating the same, on the ground that the admissions and confessions of Schneider were not admissible in the case even as against himself, because under the evidence as it then stood he was shown not to have been a party to the alleged conspiracy within three years before the finding of the indictment; and on the further ground that there was nothing in the Holsinger report that tended to show or indicate that the defendant Schneider had said or admitted that within the period of three years from the finding of the indictment he had done anything that was not perfectly proper and legal; or that he had anything to do with any unlawful matter concerned in the indictment in this case, or in the evidence in the case,

874 within the said period of three years. Another ground was that the evidence already introduced by the Government tended to show two separate conspiracies, one a conspiracy between Hyde and Schneider in 1898, and another a conspiracy between Hyde and Benson subsequently, and that counsel for the Government would have to elect which of those two conspiracies they would prosecute, since they were separate and distinct. The court overruled the objections and instructed the jury that the evidence was received against the defendant Schneider only.

Witness also testified to the letters written by Schneider. He said Schneider was shown them and he admitted that he wrote and signed them and sent the authority for the other to be written by Zabriskie. The same exceptions were reserved on the testimony of the letters to the commissioner from Tucson, Ariz., to corroborate Burns in regard to the interview with and statements made by Schneider.

Two contentions have been made under these assignments: First, that the evidence was incompetent; second, there was no evidence tending to show an act committed by Schneider in furtherance of the conspiracy within three years, before the presentment of the indictment.

As to the competency of the evidence, Schneider, himself, only urges the general objection. He does not raise the question that the confession was obtained by force, or offer of immunity, or any other improper means. That objection was made by Hyde. As the evidence did not or could not have affected Hyde, it is no ground of complaint by him.

Second. We can perceive no ground of objection to the competency of the evidence. It was a confession by Schneider and was admitted against him for any weight it might be entitled to. The only question was to its weight and legal effect. That question was raised by Schneider on a motion to instruct the jury that as there was no evidence tending to show that Schneider had taken any part in the conspiracy within three years of the finding of the indictment, he could not be convicted. In other words that it was necessary to show that he had consciously and intentionally participated in the conspiracy within three years before the finding of the indictment on February 17, 1904. That the testimony was sufficient to warrant the submission of the question whether Schneider was a party to the original conspiracy, we have already indicated. His active part in the conspiracy was performed, three years or more, before the indictment was found, and thereafter it does not appear that he took any active part therein. In refusing the instruction asked by the defendant Schneider, the court charged the jury as follows:

"If Schneider was a member of the conspiracy back of the three-year period, and it was a part of that conspiracy that acts mentioned in the indictment should be done in furtherance of the conspiracy from time to time thereafter as occasion might require through a series of years, until the object of the conspiracy should have been accomplished, although he himself was not to do and did not do anything within the three-year period, and after doing his part he remained acquiescent, expecting and understanding that said further acts would be performed by the other members of the conspiracy, and did nothing to repudiate it or withdraw from it, the acts of the other members of the conspiracy in furtherance of it would be his acts, and would have the same effect against him as if he had done them himself. He would still be acting through his colleagues. He might be playing his part by keeping still as much as he did formerly by acting. If these titles were fraudulent, as alleged, and he assisted in procuring them for the purpose of having them used thereafter by other members of the conspiracy, in effecting the fraudulent exchange alleged in the indictment, he was setting in motion a force which took him along with it, as long as he continued acquiescent and those things were being done which he had contemplated and agreed should be done.

"So, too, if one drops out of a conspiracy, he remains liable for

what was done while he constituted a part of it; and he may continue to be in the conspiracy and to be bound by the acts of his coconspirators in furtherance of it, even after he has ceased to act in it himself, if he has not in fact withdrawn from it."

No authority has been presented on this proposition, but the view of the court is a reasonable one. When one performs the part assigned to him in a conspiracy, it is just and reasonable that he should remain bound by the further acts of his coconspirators, who carry on the succeeding parts of it, if he does not expressly repudiate it or withdraw therefrom. He enters into a conspiracy and performs the part assigned to him, knowing that considerable time is necessary to its accomplishment, that successive steps are being taken by others to carry out the unlawful schemes instituted by his efforts, and that its success is dependent upon his secrecy. He ought, therefore, to be held as continuing in it and aiding it, unless he does some affirmative act showing his repentance and repudiation of it.

Another objection to this confession is that an uncorroborated confession of a defendant, without proof *alimunde* of the *corpus delicti*, is insufficient to support a conviction. This objection does not appear to have been specifically made on the trial. If it can be considered at all, it must be regarded as comprehended in the general request for an instruction for the defendant Schneider of a verdict of not guilty. Considering it as raised, however, we see no merit in it. As we have seen there was proof of the formation and prosecution of the conspiracy and of his actions therein, without his confession. His confession simply renders clearer the conditions surrounding certain applications procured by himself, as well as other details of the fraudulent means used. His conviction was not dependent upon his confession alone.

Another proposition on behalf of Schneider is that he can not be held as conspirator with Hyde because he was a mere employee of the latter. There is no merit in this contention. Being aware of the conspiracy and of Hyde's purposes, and aiding and abetting therein, he became liable, no matter what his relation to Hyde was. He can not escape the consequence of his criminal acts on the ground that he performed them for hire and had no other interest in the results to be obtained.

The thirty-second assignment of error is founded on an exception taken to the refusal of the court to permit the defendants to prove by witness Dalzell that certain envelopes addressed to 875 Jno. P. Jones at a post-office in Mexico never reached the dead letter office. The contention was that while agents of the Government were trying to get from Schneider other statements with a view of using them as evidence in the prosecution of the conspiracy for which an indictment had then been found, he went into Mexico. Schneider admitted he was there under the name of Jno. P. Jones. He gives two reasons for taking an assumed name. One that he had been considerably "badgered" in Tucson; the other was that he was afraid that the postmaster would take his mail, as he had missed several letters before, and his counsel advised him to

take another name. His wife addressed letters to him as Jno. P. Jones. The district attorney produced the envelopes referred to and witness said they were letters addressed to him in Mexico by his wife. The letters were offered in evidence. There were three of them marked Tucson and at the same date when Schneider was in Mexico. Counsel for the Government then stated that these letters had been taken from the files of the Interior Department, left there by Burns, who was now in Colorado. Defendant then called Dalzell, chief clerk of the dead letter office, and offered to prove by him that the letters had not passed through his office. Evidence on a collateral issue like this might be admissible under some circumstances; but we see no possible injury that its exclusion could do. It was apparent that these letters had not been transmitted as addressed and had been wrongfully or unlawfully obtained by agents of the Government. The mere fact that they had not passed through the dead letter office added nothing to this fact. Moreover, if the letters had been received in that office, they should have been returned to the writer and not delivered to other persons.

The thirty-third, thirty-fourth, thirty-fifth, and thirty-sixth assignments of error relate to the confessions of Schneider and to his exemption from criminal liability by reason of the Statute of Limitations. These have been considered on behalf of Schneider, and Hyde has no concern in them. In respect of limitations generally, as applied to conspiracy, the doctrine seems to be that as it may be a continuing offense each overt act in furtherance amounts to a renewal of the original agreement, hence the statute will run only from the date of the commission of the last overt act. *Lorenz v. U. S.*, 24 App. D. C., 337-387.

In that case it was said: "Undoubtedly, as argued, the conspiracy is the gist of the offense defined in section 5440, R. S., though it is not indictable until some act shall have been done by one or more of the conspirators to effect the object of the corrupt agreement. The offense is then completed and with that act the statute at once begins to run; but it does not follow that similar acts thereafter may be committed with impunity. Through the repetition of such acts—overt acts, as they are commonly called—the conspiracy is made a continuing offense. By each subsequent act it is repeated and entered into anew." See also *Ins. Co. v. State*, 75 Miss., 24-35; *U. S. v. Greene*, 115 Fed., 343-350; *Ware v. U. S.*, 84 C. C. A., 503-506; *U. S. v. Bradford*, 148 Fed., 413-417; *U. S. v. Brace*, 149 Fed., 874-877; *Jones v. U. S.*, 89 C. C. A., 303-313; *U. S. v. Raley*, 173 Fed., 402-411; *Ochs v. People*, 25 Ill. App., 379-414; 124 Ill., 399-426.

A few of the assignments of error have not been discussed, but each has received consideration. We find no reversible error in the proceedings excepted to, and the judgment will, therefore, be affirmed.

Affirmed.



876 Tuesday, October 11th, A. D. 1910.

No. 2097. October Term, 1910.

FREDERICK A. HYDE and JOOST H. SCHNEIDER, Appellants,  
vs.  
UNITED STATES OF AMERICA.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court, in this cause, be, and the same is hereby, affirmed.

Per Mr. CHIEF JUSTICE SHEPARD.  
October 11, 1910.

877 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to — inclusive contains a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Frederick A. Hyde and Joost H. Schneider, appellant-, vs. United States of America, No. 2097, October Term, 1910, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 18th day of October, A. D. 1910.

HENRY W. HODGES,  
*Clerk of the Court of Appeals of the  
District of Columbia.*

878 In the Court of Appeals of the District of Columbia.

No. 2097.

FREDERICK A. HYDE and JOOST H. SCHNEIDER, Appellants,  
vs.  
THE UNITED STATES OF AMERICA.

It is hereby stipulated that the certified transcript of the record in the above entitled case, now on file in the Supreme Court of the United States, may be taken as a return to the writ of certiorari issued by the Supreme Court of the United States, addressed to the Judges of the Court of Appeals of the District of Columbia commanding them to send to the said Supreme Court the record and proceedings in this case.

A. S. WORTHINGTON,  
*Attorney for Frederick A. Hyde and  
Joost H. Schneider.*  
GEO. W. WICKERSHAM,  
*Attorney General.*

Dec. 8, 1910.

(Endorsed:) No. 2097. Frederick A. Hyde and Joost H. Schneider, Appellants, vs. United States of America. Stipulation of counsel as to transcript of record on certiorari in Supreme Court United States. Court of Appeals, District of Columbia. Filed Dec. 8, 1910. Henry W. Hodges, Clerk.

879 In the Court of Appeals of the District of Columbia.

No. 2097.

FREDERICK A. HYDE and JOOST H. SCHNEIDER, Appellants,  
vs.  
THE UNITED STATES OF AMERICA.

In obedience to the writ of certiorari filed in this cause and returned herewith, I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, hereby certify the foregoing to be a true copy of the stipulation of counsel filed herein agreeing that the certified copy of the transcript of record now on file in the Supreme Court of the United States shall constitute the return of the Clerk of the Court of Appeals to said writ of certiorari.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 8th day of December, A. D. 1910.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,  
*Clerk of the Court of Appeals of the  
District of Columbia.*

886      FREDERICK A. HYDE ET AL. VS. THE UNITED STATES.

880      UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the District of Columbia, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Frederick A. Hyde and Joost H. Schneider are appellants, and The United States of America is appellee, which suit was removed into the said Court of Appeals by virtue of an appeal from the Supreme Court of the District of Columbia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Court of Appeals and removed into the Supreme Court of the United States, do

881 hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

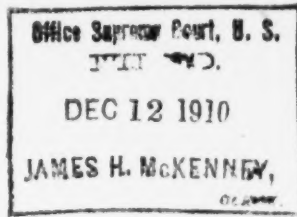
Witness the Honorable John M. Harlan, Senior Associate Justice of the Supreme Court of the United States, the 7th day of December, in the year of our Lord one thousand nine hundred and ten.

JAMES H. MCKENNEY.

*Clerk of the Supreme Court of the United States.*

882      [Endorsed:] File No. 22,419. Supreme Court of the United States, No. 798, October Term, 1910. Frederick A. Hyde and Joost H. Schneider vs. The United States. Writ of Certiorari. Court of Appeals, District of Columbia. Filed Dec. 8, 1910. Henry W. Hodges, Clerk.

883      [Endorsed:] File No. 22,419. Supreme Court U. S. October Term, 1910. Term No. 798. Frederick A. Hyde and Joost H. Schneider vs. The United States. Writ of certiorari and return. Filed December 8, 1910.



IN THE  
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

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No. ~~144~~ 447

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FREDERICK A. HYDE AND JOOST H. SCHNEIDER

vs.

THE UNITED STATES OF AMERICA.

*Motion to Advertise*

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A. S. WORTHINGTON,  
*Attorney for Petitioners.*



IN THE  
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

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No. 798.

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FREDERICK A. HYDE AND JOOST H. SCHNEIDER

*vs.*

THE UNITED STATES OF AMERICA.

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Come now the petitioners, Frederick A. Hyde and Joost H. Schneider, and for reasons stated in the subjoined memorandum move the court to advance the above entitled case and assign it for argument at an early day.

A. S. WORTHINGTON,  
*Attorney for Petitioners.*

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**MEMORANDUM.**

During the present term the cases of The United States *vs.* Gustav E. Kissel and Thomas B. Harned, No. 390, and The United States *vs.* Barber and Moon, No. 444, have been argued and are now under consideration by the court. In both of them the principal question discussed in the briefs and during the oral argument was whether, in prosecutions

for conspiracy, an overt act by one of several alleged conspirators in pursuance of the alleged conspiracy takes the case out of the statute of limitations as to all the accused, and especially as to those who were not shown to have actually participated in carrying out the scheme within three years. In the discussion of those cases some reference was made to the question whether in a prosecution for conspiracy under section 5440 of the Revised Statutes, or under certain sections of the Sherman Anti-Trust act, where it appears that the conspiracy was entered into in one jurisdiction, a Federal court in another jurisdiction has jurisdiction to try the alleged conspiracy because of an overt act committed in the jurisdiction of the trial court. There was, however, no attempt by any of the parties in the above-mentioned cases to fully present to this court the arguments and authorities bearing upon this important question of jurisdiction.

In the petition for certiorari in this case, and in the brief which was filed in support of that petition, the court was asked to review the judgment of the Court of Appeals adverse to these petitioners because it involves the effect of an overt act in prosecutions under section 5440 both as to the statute of limitations and the jurisdiction of the trial court and because while those are both questions of great importance to the United States as well as to every citizen thereof, one of them—the question of jurisdiction—was not involved either in the Barber and Moon case or in the Kissel and Harned case, and in both those cases there was a possibility that they might turn upon a question of pleading. In a memorandum filed by the Attorney-General in response to the petition for certiorari in this case, he said, referring to “the principles of law governing conspirators,” that

“It is admitted that there is conflict among the decisions of the lower courts as to some of the most important of these principles, and that in view of the numerous prosecutions under the conspiracy statutes it is of vital importance to the United States, as well

as to its citizens, that these principles be definitely settled by this court. Some of the questions presented in this case are involved in the cases of *United States vs. Barber and Moon* (No. 441) and *United States vs. Kissel* (No. 390), which have been heretofore argued at the present term of this court; but there are perhaps one or two phases of the law of conspiracy here presented which did not directly arise in those cases."

The question of jurisdiction, involving as it does the construction of that part of the Sixth Amendment to the Constitution of the United States, giving the right to the accused in a criminal prosecution to a trial in the State and District wherein the crime shall have been committed, is obviously of greater importance both to the Government and to its citizens than any question involving merely the construction of an act of Congress fixing a period of limitations for prosecutions for crime. The question of jurisdiction is not involved in either the Barber and Moon case or the Kissel and Harned case, and as to the statute of limitations in this case, it arises not by a plea traversing some of the allegations of an indictment, but in the actual trial of a case where the accused has been convicted under instructions which deprived him of the benefit of the statute of limitations because of acts alleged to have been committed within the three-year period by a codefendant found by the jury to be not guilty of any connection with the alleged conspiracy.

It is plain that if this court shall hold in the two cases which have been argued and submitted that an overt act by one defendant may or may not have the effect of renewing the conspiracy ~~as to~~ as to those who have had no actual connection with the matter for more than three years, that decision will have an important and may have a decisive bearing upon the question whether such an overt act may give the Federal court of the jurisdiction where it is committed the right to try other persons for a conspiracy originally entered into in another jurisdiction. It is, therefore,



important for the Government and for the petitioners in this case that this court should hear what the respective parties may have to submit on this question of jurisdiction before deciding in the other two cases the question arising out of the plea of the statute of limitations.

Certainly if this case is to be advanced at all it should be advanced before the determination by this court of the questions involved in the other two cases. It may be presumed that the Government does not wish to have this case retained in its present position on the docket until a decision shall have been rendered in the Barber and Moon and the Kissel and Harned cases, and then have it advanced.

A. S. WORTHINGTON,  
*Attorney for Petitioners.*

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*To the Attorney-General:*

Please take notice that I shall submit the foregoing motion and memorandum in support thereof to the court at the opening of the court on Monday, December 12, 1910, or as soon thereafter as counsel can be heard.

A. S. WORTHINGTON,  
*Attorney for Petitioners.*

0-10-447

FOR THE SUPREME COURT OF THE UNITED STATES

## Defence Levy 1970

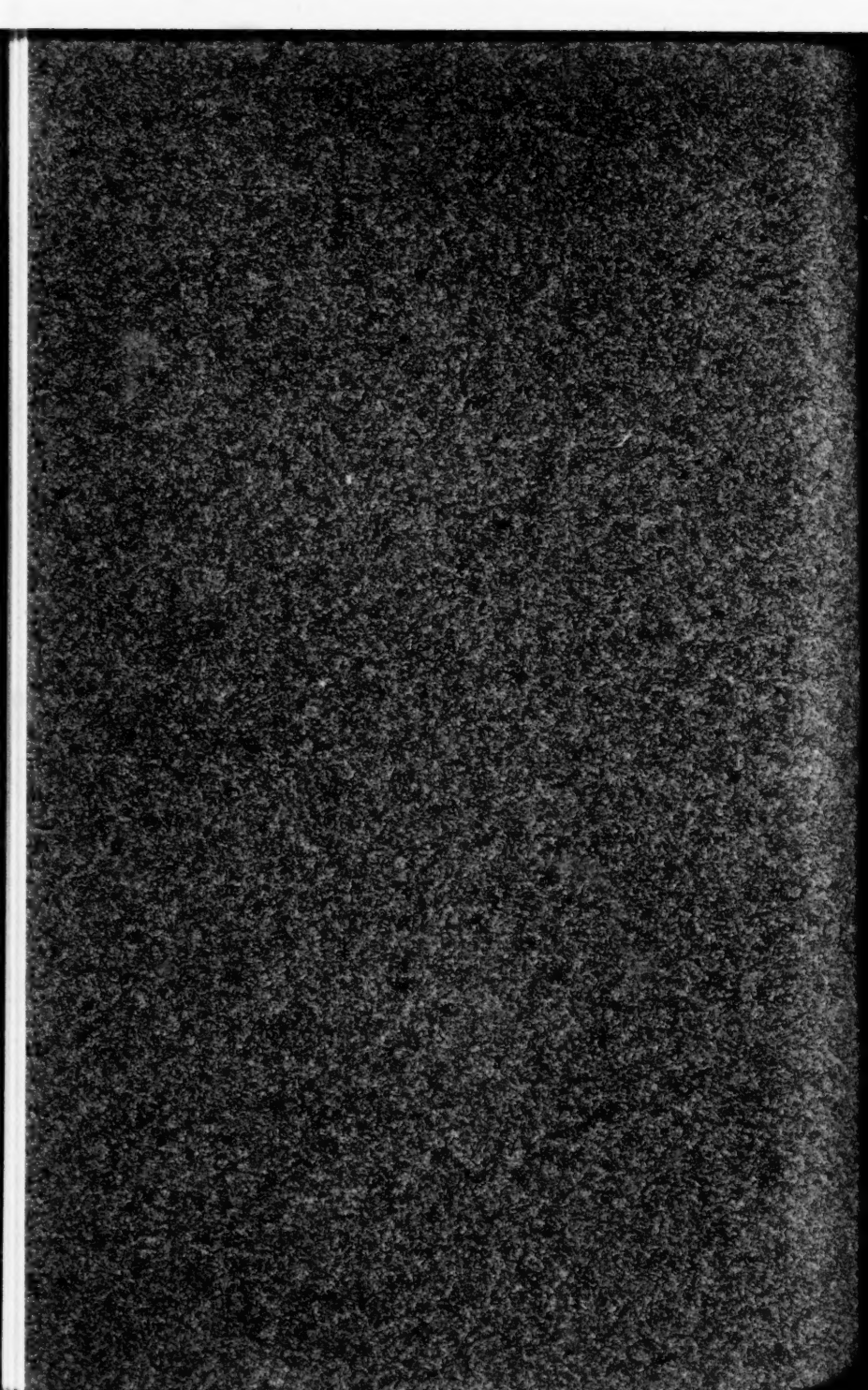
## Termination of Host and Guest in Solidarity

18

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

FOR THE RECORD: CHAIRMAN OF THE BOARD OF DIRECTORS OF THE COMPANY

## CONCLUSION



# In the Supreme Court of the United States.

OCTOBER TERM, 1910.

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FREDERICK A. HYDE AND JOOST H.	}	No. 798.
Schneider, petitioners,		
v.		
THE UNITED STATES.		

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF  
THE DISTRICT OF COLUMBIA.

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## MOTION TO ADVANCE.

On February 17, 1904, Hyde, Schneider, and two others were indicted in the Supreme Court of the District of Columbia for conspiracy to defraud the United States out of the possession and use of, and the title to, divers large tracts of public lands of the United States open and to be opened to settlement, in violation of section 5440 of the Revised Statutes. After proceedings in the Northern District of California for the removal of Hyde to this district for trial (*Hyde v. Shine*, 199 U. S., 62), the case was heard before a jury, commencing April 2, 1908, and on June 22, 1908, Hyde and Schneider were found guilty, the former being sentenced to two years' imprisonment and to pay a fine of \$10,000,

and the latter to be imprisoned for one year and two months and to pay a fine of \$1,000. On appeal to the Court of Appeals the judgment of the trial court was affirmed on October 12, 1910. A petition for a writ of certiorari was submitted to this court on November 28, 1910, which was not opposed by the Government, and granted on December 5, 1910. In the meantime the petitioners had been at large on bail.

In accordance with rule 26, section 3, the Solicitor General moves the court to advance the case on the docket and set it down for hearing on a day convenient to the court during the October term, 1911. Notice of this motion has been served on opposing counsel.

FREDERICK W. LEHMANN,  
*Solicitor General.*

MAY, 1911.





IN THE

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1910.**

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**No. ~~100~~ 447**

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**FREDERICK A. HYDE AND JOOST H. SCHNEIDER,**  
**PETITIONERS.**

**vs.**

**THE UNITED STATES OF AMERICA.**

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**PETITION FOR WRIT OF HABEAS CORPUS.**

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**A. B. WOODRIDGE,**  
**Attorney for Petitioners.**

IN THE  
SUPREME COURT OF THE UNITED STATES.  
OCTOBER TERM, 1910.

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No.

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FREDERICK A. HYDE AND JOOST H. SCHNEIDER,  
PETITIONERS.

VS.

THE UNITED STATES OF AMERICA.

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*To the Supreme Court of the United States:*

The petitioners, Frederick A. Hyde and Joost H. Schneider, respectfully represent as follows:

They ask the court to review by writ of certiorari the judgment of the Supreme Court of the District of Columbia in a criminal case, affirmed by the Court of Appeals of said District. They ask this for the purpose of having this court decide the following important and fundamental questions of law:

I. Whether, notwithstanding the provisions of the Constitution of the United States requiring that an accused person shall be tried in the State where his offense is alleged to have been committed, a person accused of having entered into a

conspiracy in California in violation of section 5440 of the Revised Statutes, may, against his protest, lawfully be tried for that offense in the District of Columbia.

II. *Whether such accused person may be prevented from having the preceding question determined by this court (without being compelled to resort to a petition for a writ of habeas corpus) by the erroneous statement in the indictment that the alleged conspiracy was entered into in the District of Columbia.*

III. Whether such accused person may be convicted after his alleged offense is barred by the Statute of Limitations, because without his knowledge or participation some other person accused with him of the same offense has done some act in pursuance of such alleged conspiracy within the period of limitations.

That the court may the more certainly be advised of the matters out of which the foregoing questions arise, the petitioners further state as follows:

1. On the 17th day of February, 1904, they, together with one John A. Benson and one Henry P. Dimond, were charged by an indictment found by the grand jury of the District of Columbia, containing forty-two counts, with having theretofore conspired *in the District of Columbia* to defraud the United States. In said indictment it was further charged that certain so-called "overt acts" were committed in the District of Columbia, in pursuance of said alleged conspiracy, the indictment charging that some of such overt acts were committed by said Benson, some by said Dimond and some by the petitioner Frederick A. Hyde. None were charged to have been committed by the petitioner Joost H. Schneider.

2. At the time said indictment was found and for many years prior thereto the petitioner Frederick A. Hyde was,



and he still is, a resident of the State of California. During the same period the petitioner Joost H. Schneider was a resident first of the State of California and afterward of the Territory of Arizona, where he now resides.

3. Soon after said indictment was so found, proceedings were instituted by the United States before a United States commissioner in the city of San Francisco, seeking to have the petitioner Frederick A. Hyde removed to the District of Columbia to there answer to said indictment. And upon his removal being ordered accordingly a petition for a writ of *habeas corpus* and a writ of *certiorari* was filed in the Circuit Court of the United States for the Northern District of California by the petitioner Frederick A. Hyde. Said Circuit Court refused to grant said petition. An appeal was thereupon taken to this court, which affirmed the judgment of said Circuit Court—three members of the court dissenting (199 U. S., 62).

4. It was contended on behalf of said petitioner Frederick A. Hyde, in said case in this court, that the order of removal was improperly granted because it appeared in the testimony taken in the removal proceedings that if any conspiracy was entered into as charged in the indictment it was entered into in the State of California, and not in the District of Columbia. But by said majority opinion of this court it was held that, *because it was charged in the indictment that the conspiracy was entered into in the District of Columbia*, it was unnecessary to decide the question whether if such conspiracy was entered into in the State of California the Supreme Court of the District of Columbia would have jurisdiction of the case by reason of the fact that certain overt acts were alleged to have been committed in the District of Columbia.

The three members of the court who dissented said:

"This case is an extreme illustration of the very great hardship involved in sending a man 3,000 miles

across the continent, from California or Oregon, to this District for trial, where he is to bring his witnesses, and where on such trial it will appear that the court must direct an acquittal, because the averment of the formation of the conspiracy at Washington, D. C., is shown to be false to a demonstration."

5. The four defendants named in said indictment, including your petitioners, were brought to trial thereon before the Supreme Court of the District of Columbia on the 2d day of April, 1908. The trial continued until the 22d day of June, 1908, when a verdict of guilty was rendered by the jury as to your petitioners on all of the counts of said indictment (except two which the Government abandoned) and a verdict of not guilty was rendered upon all the counts of said indictment as to the defendants John A. Benson and Henry P. Dimond. The petitioner Frederick A. Hyde was thereupon sentenced to pay a fine of \$10,000 and to be imprisoned for the period of two years, and the petitioner Joost H. Schneider was sentenced to pay a fine of \$1,000 and to be imprisoned for a period of one year and two months. From said judgment your petitioners appealed to the Court of Appeals of the District of Columbia, in which court the judgment was affirmed as to both of the petitioners on the 12th day of October, 1910. Upon counsel for the petitioners stating to the Court of Appeals that an application would be made to this court on their behalf for a writ of *certiorari*, that court directed that its mandate to the Supreme Court of the District of Columbia be withheld until a reasonable time shall have been given for the presentation of the petition to this court and action by this court thereon. That order remains in force. Pending the appeal the petitioners were admitted to bail.

6. The petitioners are advised, and therefore aver, that during said trial the following, among other, errors of law were committed by the presiding justice:

A. At the close of the evidence on behalf of the Government counsel for petitioners moved the court to instruct the jury to render a verdict of not guilty as to all the defendants upon the ground that by the Government's own evidence in the case it appeared that no such conspiracy as was charged in the indictment on trial was entered into in the District of Columbia. Counsel for the Government opposed the motion upon the ground that while it was true that the evidence did not tend to show that the conspiracy was entered into in the District of Columbia, it did tend to show that certain of the overt acts charged in the indictment were committed in the District of Columbia, and that thereby the trial court had jurisdiction. In the oral discussion of this question before the court counsel for one of the defendants having said to the court that he claimed that the Government was "bound to show that the conspiracy was organized and made effective here," the following colloquy occurred between the court and Mr. Baker, the United States Attorney for the District of Columbia:

"THE COURT: Yes, I know; but I do not know that they claim that they can prevail here except on the theory that it is sufficient to show an overt act here. Is that right?"

"MR. BAKER: That is our position, if the court please.

"THE COURT: *They stand on that theory entirely. If that theory is wrong, of course they fall.*"

The position of the Government, as thus indicated, was maintained throughout the trial, and at the close of all the evidence the court instructed the jury in substance that if the jury found *that the conspiracy charged in the indictment was entered into in California* and that any of the overt acts charged in the indictment were committed as charged in the District of Columbia, that would be sufficient to warrant the jury in finding a verdict of guilty as to such of the defendants as were found by the jury to have entered into

the alleged conspiracy, whether they had knowledge of, or participated in, such acts or not.

And so, while the petitioner Frederick A. Hyde in the removal proceedings, was prevented from obtaining the judgment of this court upon the question of jurisdiction because it was charged in the indictment that the conspiracy was entered into in the District of Columbia, it was admitted by the Government at the trial that the Government was not in possession of any evidence tending to show that the alleged conspiracy was in fact entered into in said District.

B. Most of the so-called overt acts consisted in the filing by said Dimond in the General Land Office in Washington of formal papers in certain cases pending therein. The trial court instructed the jury in substance that even if said Dimond was not a party to the alleged conspiracy, and filed such appearances innocently, his action in that regard would be sufficient to give that court jurisdiction as to the conspiracy alleged to have been entered into in California if, in filing the appearances, he was acting as the agent of any party to such alleged conspiracy who was causing such acts to be done in pursuance thereof. As Dimond was acquitted, this instruction must have governed the result.

C. Among the overt acts alleged in said indictment to have been committed pursuant to the alleged conspiracy were three charged to have been committed by the petitioner Frederick A. Hyde. They consisted in written communications which were either sent by mail from San Francisco to Washington, or communications which were sent by mail from San Francisco to the local Land Office of the United States in the State of California, and were forwarded to the Commissioner of the General Land Office. The trial court instructed the jury in substance that if any such communication was so sent or caused to be sent by the petitioner Frederick A. Hyde from California to this District in pur-

suance of the alleged conspiracy, that would be an overt act here which would give to the Supreme Court of the District of Columbia jurisdiction to try all the defendants upon the charge of conspiracy contained in the indictment.

D. During the trial the evidence tending to show any connection of the petitioner Joost H. Schneider with the alleged conspiracy related to acts done by him more than three years before the finding of the indictment. It was contended by counsel for the petitioners that unless the jury should find that he "consciously participated" in the alleged conspiracy within three years before the finding of the indictment, he was entitled to an acquittal because of the provisions of section 1044 of the Revised Statutes of the United States (as amended, 19 Stat., 32), which bars such a prosecution unless the indictment is found within three years after the commission of the offense. But the court, over the objection and exception of the petitioners, instructed the jury in substance that if said Joost H. Schneider was a party to an original conspiracy as charged in the indictment more than three years before the indictment was found, the Statute of Limitations would not avail him if any of the overt acts charged in the indictment were committed within the three years by any of the other defendants, whether he participated in them or had knowledge of them **or not.**

The petitioners are advised that each of the questions of law raised as above stated is of great importance to every citizen of the United States as well as to the Government of the United States; that none of them has ever been decided by this court, and that as to the fundamental questions involved—the effect of an overt act in giving jurisdiction and in taking away the protection of the statute of limitations, there is a conflict of decisions in the inferior Federal courts. Wherefore, and especially because as to the question

of jurisdiction, involving as it does a claim of right under the Constitution of the United States, the petitioners were prevented from heretofore obtaining a decision thereon by this court because of the now admittedly mistaken statement in the indictment that the alleged conspiracy was entered into in the District of Columbia, the petitioners respectfully pray that a writ of certiorari issue out of and under the seal of this honorable court, directed to the Court of Appeals of the District of Columbia, requiring that court to certify and send to this court, on a certain day to be therein designated, a full and complete transcript of the record and all proceedings in the said Court of Appeals in the said case therein entitled, "Frederick A. Hyde *et al.*, appellants, *vs.* The United States of America," to the end that the case may be reviewed and determined by this court, as provided in the act of Congress entitled "An act to establish a Code of Law for the District of Columbia," approved March 3, 1901, section 234.

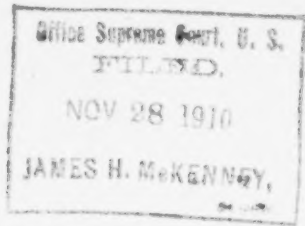
And your petitioners will ever pray.

FREDERICK A. HYDE,  
JOOST H. SCHNEIDER,  
By A. S. WORTHINGTON,  
*Their Attorney.*

*To the Attorney General:*

Please take notice that the foregoing petition will be presented to the court on Monday, November 28, 1910, at the opening of the court or as soon thereafter as counsel can be heard.

A. S. WORTHINGTON,  
*Attorney for Petitioners.*



**IN THE  
SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1910.

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**No. ██████ 447**

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**FREDERICK A. HYDE AND JOOST H. SCHNEIDER,  
PETITIONERS,**

**vs.**

**THE UNITED STATES.**

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**BRIEF ON BEHALF OF THE PETITIONERS.**

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**A. S. WORTHINGTON,**  
*Attorney for Petitioners.*





IN THE  
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

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No. 798.

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FREDERICK A. HYDE AND JOOST H. SCHNEIDER,  
PETITIONERS,

*vs.*

THE UNITED STATES.

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**BRIEF ON BEHALF OF THE PETITIONERS.**

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**Statement of the Case.**

A certified copy of the record in the case which this court is asked to review by writ of certiorari was filed with the petition. It is quite long, but the questions of law which are referred to in the petition arise upon undisputed facts.

The first count of the indictment (Rec., 1-8) charges in brief that the petitioners, Frederick A. Hyde and Joost H. Schneider, together with one John A. Benson and one Henry P. Dimond, on the 30th day of December, 1901, *at the city of Washington, in the District of Columbia*, conspired with divers other persons unknown to the grand jury to defraud the United States out of the possession and use of and the title to divers large tracts of the public lands of the United

States open, and to be opened, to selection. This count further charges that the method by which the alleged scheme was to be carried into effect was to obtain the title to school lands in forest reservations in California and Oregon by certain irregular or unlawful methods, and exchange the lands so obtained for public lands of the United States open to settlement, pursuant to an act of Congress approved June 4, 1897 (30 Stat., 11, 36). The first count then sets up as an overt act in pursuance of the alleged conspiracy that the defendant Dimond on December 30, 1901, presented to the Commissioner of the General Land Office in the District of Columbia an unsigned paper which purported to be an order to the Commissioner to enter Dimond's appearance in a certain forest lieu selection case (8).

There are forty-one other counts in the indictment, but they all simply reaffirm in general terms the averments of the first count as to the conspiracy and set up different overt acts, most of which consist in the entry of an appearance in the General Land Office by Dimond in different forest lieu selection cases, or the filing in that office by him of other formal papers.

The 15th count (36) charges as an overt act that the petitioner Frederick A. Hyde, on July 19, 1903, "did cause to be transmitted by mail," from the United States Land Office at Vancouver, in the State of Washington, to the Commissioner of the General Land Office in the City of Washington, a document which is set out, and which is simply a notice to the Commissioner that Hyde, as attorney for another person, appealed to the Secretary of the Interior from a certain decision of the Commissioner.

The 22d count charges that Hyde on March 31, 1902, "did cause to be presented to the said Commissioner of the General Land Office, by the hand of the said Henry P. Dimond," an instrument which authorized a named agent to post certain notices on the ground embraced in a forest lieu selection case (50-51).

The 29th count (68) charges as another overt act that Hyde caused to be transmitted by mail from Vancouver to Washington a document which is set out. But this count was abandoned at the trial (818).

Counts 35 to 42, inclusive (86-94), charge as overt acts the payment of money by the defendant Benson to two clerks in the General Land Office in Washington named Harlan and Valk. [While it was proved at the trial that Benson made these payments, and his counsel practically admitted the fact (363), there was no evidence tending to show that either of the petitioners authorized such payments or had any knowledge that they were made; yet they were both convicted on those counts, while Benson was acquitted.]

It will be seen that while the indictment appears to be divided into forty-two separate counts, as a matter of fact it contains but one charge of conspiracy and charges different overt acts in pursuance thereof. Counsel agreed, and the court ruled at the close of the trial, that the indictment would be considered as charging a single conspiracy with different overt acts, and the court so instructed the jury in the final charge (846). This is material, because if the accused should be found guilty of the conspiracy charged and of any one of the overt acts the result would be the same as if they were convicted of the conspiracy and all the overt acts.

As stated in the petition in this case, when it was attempted to bring Hyde from San Francisco to Washington to answer to the indictment he resisted, and the question whether the order of removal should be made was finally brought before this court in *Hyde vs. Shine*, 199 U. S., 62.

In that case, on the subject of the jurisdiction of the Supreme Court of the District of Columbia, Mr. Justice Brown, who delivered the prevailing opinion, said:

"The second assignment, that the Supreme Court of the District of Columbia had no jurisdiction of the

alleged offense, is based upon the proposition that the conspiracy, if any existed, was entered into either in the northern district of California or the district of Oregon, and that nothing but overt acts in pursuance of the conspiracy were done in the District of Columbia. Granting that the *gravamen* of the offense is the conspiracy, and that at common law it was neither necessary to aver nor prove an overt act, *Rex vs. Gill*, 2 B. & Ald., 204; *Bannon vs. United States*, 156 U. S., 464, 468, an overt act is necessary under Rev. Stat., sec. 5440, to complete the offense.

\* \* \* \* \*

"It was aptly said by Mr. Justice Woods in *United States vs. Britton*, 108 U. S., 199, 204, that the offense consisted in the conspiracy, and that the overt act afforded a *locus penitentiae*, so that before the act done either one or all of the parties may abandon their design, and thus avoid the penalty prescribed by the statute. As the indictment in this case charges that the conspiracy was entered into in the city of Washington, it becomes unnecessary to consider whether an indictment will lie within the jurisdiction where the overt act was committed, though there are many authorities to that effect. *King vs. Briscoe*, 4 East. Rep., 164; *People vs. Mather*, 4 Wend. (N. Y.), 229; *Commonwealth vs. Gillespie*, 7 S. & R., 469; *Noyes vs. State*, 41 N. J. Law, 418; *Commonwealth vs. Corlies*, 3 Brews. (Pa.), 575."

Upon the same subject, Mr. Justice Peckham, who delivered a dissenting opinion, concurred in by Mr. Justice White and Mr. Justice McKenna, after adverting to the fact that the circuit judge who had refused to issue the writs of *habeas corpus* and *certiorari* had not touched upon the

"question of the want of proper cause to believe the defendants guilty based upon the absence of both defendants from the District of Columbia at the time of the alleged formation of the conspiracy."

said:

"I admit that the weight of evidence will not in such cases be reviewed here, but evidence which con-

clusively rebuts the presumption of probable cause arising from the indictment and which is uncontradicted, may be looked at, and a finding of probable cause reversed. In order to refer to it the evidence must be part of the record, and in such a case as this the application for a writ of certiorari to bring up the evidence which the petitioner avers shows such fact is not addressed to the discretion of the court, but on the contrary the petitioner has the right to demand that it shall be granted. The right is none the less, when the want of probable cause rests upon conclusive evidence of the absence of the defendants from the District at the time when the indictment alleges the conspiracy was formed in such District. If defendants were not then there, they could not be guilty of the crime charged in the indictment. This case is an extreme illustration of the very great hardship involved in sending a man 3,000 miles across the continent, from California or Oregon, to this District for trial, where he is to bring his witnesses, and where on such trial it will appear that the court must direct an acquittal, because the averment of the formation of the conspiracy at Washington, D. C., is shown to be false to a demonstration.

"The expense to a defendant in his necessary preparation for trial, and in procuring the attendance of witnesses in his behalf from such a distance, must necessarily be enormous, and in many, if not in most cases, utterly beyond the ability of a defendant to pay. The enforcement of the criminal law should not be made oppressive in such cases, and, therefore, when it appears there was no probable cause to found the indictment upon, the order of removal should be refused."

All the defendants were brought to trial in April, 1908. After a trial lasting nearly three months, Benson and Dimond were acquitted. Hyde and Schneider were convicted upon all the counts except counts 29 and 33, which were abandoned, and each of them was sentenced to imprisonment and to pay a fine. The Court of Appeals of the

District of Columbia affirmed the judgment, the opinion of that court being delivered by Chief Justice Shepard (p. 865).

The following are the parts of the record which refer to what took place at the trial, so far as the two main questions which are referred to in the petition in this case are concerned:

PARTS OF THE RECORD BEARING UPON THE QUESTION OF THE JURISDICTION OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

When the evidence for the Government was closed a motion was made by the defendants to have the court instruct the jury to render a verdict of not guilty as to all of them. It was expressly conceded by counsel for the Government and ruled by the court that there was no evidence in the case tending to show that the alleged conspiracy was entered into in the District of Columbia by any of the defendants and that the case would have to stand or fall on the theory that it was sufficient to prove the alleged conspiracy to have been formed elsewhere and "show an overt act here" (675).

The court overruled the motion upon the ground, as to this point, that if any of the overt acts charged in the indictment were found to have been committed in this District, that was sufficient to sustain the jurisdiction even although the conspiracy itself was formed in California or Oregon (671-672). When all the evidence was in, the motion was renewed upon the same ground, and the same ruling was made and an exception allowed (Rec., 800-801).

And in the final charge to the jury the court, over the objection and subject to the exception of the defendants, gave to the jury the following instruction (Rec., 849):

"If the defendants agreed together to defraud the United States out of the lands described in the general words of the indictment, and to do it by the

fraudulent means there stated, and to accomplish their said purpose by doing or having done here in the District of Columbia any of the things alleged in the indictment as to be done here, and any of such things were done here pursuant to said agreement, then it is the same as if they had all been here and actually engaged in the doing of them. As far as such acts are concerned, they are to be treated as having been performed here by the defendants in person; and, moreover, such acts are characterized by the purpose for which they were performed. Being performed, as we are now supposing for the moment that they were, for the purpose of carrying out the said agreement of the defendants, said agreement itself is contained in the acts, and the conspiracy is here just as truly as if the defendants were all here in person, doing those things with the common mind and purpose which contemplated them."

As to those counts in the indictment which charge overt acts by the filing in the General Land Office by Dimond of certain papers, the court was requested by the defendants to instruct the jury that if the jury were not satisfied by the evidence beyond a reasonable doubt that in filing or causing to be filed such papers Dimond "was in collusion with one or more of the other defendants in attempting to defraud the United States by the means set forth in the indictment or some of such means, they will render a verdict of not guilty as to all the defendants as to each of said counts." But the court refused to give this instruction and allowed an exception (801-802).

And in the final charge to the jury the court particularly called the attention of the jurors to counts 15 and 22, in which the transmission of papers by Hyde from San Francisco or Vancouver to Washington is set up as an overt act.

**PARTS OF THE RECORD BEARING UPON THE QUESTION OF  
THE STATUTE OF LIMITATIONS.**

While the questions raised at the trial as to the Statute of Limitations relate specifically to the petitioner Schneider only, it is manifest that those rulings affect the petitioner Hyde as well. If the evidence did not justify a finding that Schneider was concerned in the conspiracy within the period of limitations it could not justify the jury in finding that Hyde, during that period, had conspired with Schneider.

There is a great deal of evidence in the record in reference to the relations between Schneider and Hyde, but practically all of it relates to transactions that occurred more than three years before the indictment was found.

Schneider was a salaried employee of Hyde from 1879 until December, 1901. His principal duties were in superintending several ranches owned or controlled by Hyde, but he occasionally rendered services of a clerical nature in Hyde's office in San Francisco. In 1898 he went to Oregon for Hyde and was there instrumental in obtaining applications for school lands in the Cascade Forest Reserve. It was contended on behalf of Schneider at the trial that there was no evidence tending to show any act done or participated in by him in pursuance of the alleged conspiracy within the three years. But it is unnecessary to trouble the court with the details of the evidence on that subject, because the trial court instructed the jury that they might find Schneider guilty whether the evidence did or did not show that he had had anything to do with the land transactions of Hyde subsequent to February 16, 1901. The indictment was found February 17, 1904 (94).

The following are the parts of the final charge to the jury which refer to this subject and to each of which the defendants were allowed an exception (849-850):

1. "If Schneider was a member of the conspiracy back of the three-year period, and it was a part of



that conspiracy that acts mentioned in the indictment should be done in furtherance of the conspiracy from time to time thereafter as occasion might require through a series of years until the object of the conspiracy should have been accomplished, although he himself was not to do and did not do anything within the three-year period, and if after doing his part he remained acquiescent, expecting and understanding that said further acts would be performed by the other members of the conspiracy, and did nothing to repudiate it or withdraw from it, the acts of the other members of the conspiracy in furtherance of it, would be his acts, and would have the same effect against him as if he had done them himself. He would still be acting through his colleagues. He might be playing his part by keeping still as much as he did formerly by acting. If these titles were fraudulent, as alleged, and he assisted in procuring them for the purpose of having them used thereafter by other members of the conspiracy in effecting the fraudulent exchange alleged in the indictment, he was setting in motion a force which took him along with it, as long as he continued acquiescent and those things were being done which he had contemplated and agreed should be done."

2. "So, too, if one drops out of a conspiracy, he remains liable for what was done while he constituted a part of it; and he may continue to be in the conspiracy and to be bound by the acts of his co-conspirators in furtherance of it, even after he has ceased to act in it himself, if he has not in fact withdrawn from it."

**ARGUMENT.****AS TO THE QUESTION OF THE STATUTE OF LIMITATIONS.**

It will be seen from the foregoing statement that in this case is involved the effect in prosecutions under section 5440 of an overt act, (1) in giving jurisdiction to the courts of the place where the act is done, and (2) in obviating the defense of the Statute of Limitations. The second of these questions has been much discussed in two cases recently argued and submitted to this court, U. S. *vs.* Barber and Moon, No. 444, and U. S. *vs.* Kissel and Harned, No. 390. In each of those cases a plea setting up the Statute of Limitations was filed. Much of the discussion in them has been as to the propriety of presenting the defense of limitations by a special plea instead of raising it at the trial under a plea of not guilty.

No such objection can arise in this case. Here the defense of limitations was made at the trial and the court distinctly charged the jury that if Schneider and Hyde conspired, say, in 1898, and thereafter Schneider had nothing to do with the land operations of Hyde which form the subject-matter of the indictment, he and Hyde might be convicted of conspiring in 1902 or 1903 if Hyde in those years was still carrying on those operations.

In the several briefs of the eminent counsel who represented the accused parties in the two cases above referred to the authorities have been so fully considered and the reasons for sustaining the favorable decisions of the lower courts in those cases so ably presented, that the undersigned can add nothing to them. But a reading of the briefs on behalf of the Government in those cases suggests that the learned Assistant Attorney-General who signs them has not given due weight to the purpose for which statutes of limitation are enacted. He lays great stress upon the supposed injustice of allowing a conspirator to escape from the mere lapse

of time, while his confederates are carrying out the original agreement to which he was a party. He overlooks the danger to which an innocent man will be subjected if after the lapse of many years he may find himself called upon to meet a charge of conspiracy growing out of some business transaction, the witnesses upon whom he would rely being dead, the papers that would prove his innocence being destroyed, and his own recollection of events long gone by so impaired that he is defenseless before his accusers.

Take this very case. Schneider was but one of a number of Hyde's employees who in 1898 and 1899 aided him in obtaining for himself or for others the title to a considerable quantity of school lands in forest reservations in Oregon and in California. The business of exchanging those lands for lands of the United States outside of forest reservations is long drawn out. It is altogether probable that it will not be entirely closed for thirty, forty, or even fifty years. Yet, according to the contention of the Government, not only Schneider but any of the other persons who were employed by Hyde in his office in 1898 and 1899, and then left his service, may at any time during those years be called upon to respond to a charge of conspiracy for acts done in 1898 or 1899, when every particle of evidence in his favor has been destroyed and the facts in the case obliterated even from his own memory.

Let us suppose that influenced by this prosecution Hyde refrains for twenty years from taking any further step to complete the exchange of his school lands, or of those of his clients, for Government lands. Every one must concede that then the Statute of Limitations would protect him and all concerned from further prosecution. But if at the end of that time, of his own motion entirely, he should send a letter to the Commissioner of the General Land Office asking for action in one of these cases, instantly, as the Government claims, the dead conspiracy is brought to life and everybody who had any relations with Hyde in acquiring the

school lands in 1898 or 1899 becomes subject to prosecution.

The learned Assistant Attorney-General suggests that to avoid all this let the person implicated withdraw from the conspiracy. But the Statute of Limitations was not enacted for the protection of the guilty. Its object is to prevent those who are not guilty from being harassed by belated prosecutions. And that object can be effected only by applying it to all alike. The statute rests upon the proposition that it is better that the guilty should escape than that the innocent should suffer.

Even in civil cases this court has frequently expressed its determination that statutes of limitation shall be strictly enforced.

"It has often been matter of regret in modern times, that in the construction of the statute of limitations, the decisions had not proceeded upon principles better adapted to carry into effect the real objects of the statute; that, instead of being viewed in an unfavorable light, as an unjust and discreditable defence, it had received such support as would have made it what it was intended to be, emphatically, a statute of repose. It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt from lapse of time, but to afford security against stale demands after the true state of the transaction may have been forgotten, or be incapable of explanation, by reason of the death or removal of witnesses. It has manifest tendency to produce speedy settlements of accounts, and to suppress those prejudices which may rise up at a distance of time, and baffle every honest effort to counteract or overcome them. Parol evidence may be offered of confessions (a species of evidence which, it has been often observed, it is hard to disprove, and easy to fabricate), applicable to such remote time, as may leave no means to trace the nature, extent, or origin of the claim, and thus open the way to the most oppressive charges."

*Bell vs. Morrison*, 1 Peters, 351, 360.

"Statutes of limitations are founded on sound policy. They are statutes of repose and should not be evaded by a forced construction."

*Pillow vs. Roberts*, 13 How., 472, 477.

"The Statute of Limitations is to be upheld and enforced not as resting only upon a presumption of payment by lapse of time, but according to its intent and object as a statute of repose. \* \* \* The Statute of Limitations was not enacted to protect persons from claims fictitious in their origin, but from ancient claims, whether well or ill founded, which may have been discharged but the evidence of discharge may be lost."

*Shepherd vs. Thompson*, 122 U. S., 231, 234, 236.

"Whatever prejudice there may have been against statutes of limitations, it is a cardinal principle of modern law and of this court that they are to be treated as statutes of repose and are not to be construed so as to defeat their obvious intent to secure the prompt enforcement of claims during the lives of the witnesses and when their recollection may be presumed to be still unimpaired."

*Campbell vs. Haverhill*, 155 U. S., 610, 617.

"The theory of this remedial act is that upon which statutes of limitations are based—the presumption that after a long lapse of time without assertion, a claim, whether for money or for an interest in land, is presumed to have been paid or released. This is a rule of convenience and policy, the result of a necessary regard for the peace and security of society."

*Wilson vs. Iseninger*, 185 U. S., 55, 60.

The rule on this subject, approved by the Court of Appeals in this case, practically repeals the Statute of Limitations in conspiracy cases as to all persons not shown to have been engaged in the offense within three years. Where two or more persons are actual participants in doing something that is claimed to be an act in pursuance of a conspiracy alleged

to have been entered into many years before, there may at least be a plausible reason for urging that by such joint action they either renew the old conspiracy or enter into a new one, so as to take away the benefit of the statute. But if such acts are to have the same effect against other persons not concerned in or having knowledge of them, the statute as to them might as well never have been passed.

#### AS TO THE QUESTION OF JURISDICTION.

A proper presentation on behalf of the petitioners of this important question would require an extended brief. It is conceived that that is not necessary now in support of this application. But perhaps a word should be said about the authorities that have been referred to as opposing the proposition for which the petitioners contend.

In *Hyde vs. Shine*, *supra*, Mr. Justice Brown cites several cases as holding that in conspiracy cases "an indictment will lie within the jurisdiction where the overt act was committed."

The cases he mentions are the following:

1. *King vs. Brisac*, 4 East, Rep., 164.

In that case some of the counts of the indictment averred that a conspiracy was entered into on the high seas, and that in pursuance thereof the overt act of presenting a false voucher and receiving payment thereof was committed in Middlesex County where the court sat. While the court did intimate in its opinion that the overt act gives jurisdiction as to the conspiracy, it expressly refrained from deciding that question, and it sustained the conviction upon the ground that another count in the indictment charged the specific crime of presenting a false voucher, which crime was committed in Middlesex County.

This case was decided in 1803, long after the adoption of the Constitution of the United States and of the sixth

amendment thereto. Prior to the Revolution, in the case of *Reg. vs. Best*, 1 Salk., 174, Judge Holt had decided that "The venue must be where the conspiracy was, not where the result of the conspiracy is put in execution."

*Rex vs. Briscoe* seems never to have been followed, or even cited, in England on this point, but in *Reg vs. Bolton*, 12 Cox Crim. Cas., 87, a conspiracy case which was tried in 1871, Chief Justice Cockburn expressly held that two of the defendants must be acquitted, because the evidence tended to show that they conspired in Scotland and not in England. There was ample evidence of overt acts by others of the conspirators in London.

## 2. *People vs. Mather*, 4 Wend., 229.

In that case the indictment was found and the trial had in Orleans county, New York. The original conspiracy was formed in another county, but while it was in process of being carried out Mather joined it in Orleans county, and all the acts performed by him were performed there in association with others of the conspirators. *He was tried in the county in which he conspired.*

## 3. *Noyes vs. State*, 41 N. J. L., 418.

In that case it was held that a prosecution for conspiracy lies only in the State in which the conspiracy was formed; that the overt act alone does not give jurisdiction. The conviction in the case was sustained on the ground that Noyes and the agent of another conspirator had together performed in New Jersey the unlawful act which it was the object of the conspiracy to accomplish. *Noyes was tried in the State where he conspired.*

In a later case in the same court—the Supreme Court of New Jersey—the charge was a conspiracy to procure persons not qualified for suffrage to vote. Replying to an objection to the jurisdiction of the trial court the Supreme

Court, after referring to the fact that the indictment charged that the illegal voting was to be done in Essex county, says:

"This fixes the place where the purpose of the conspiracy was to be executed. *But the real point, so far as concerns jurisdiction, is where was the conspiracy entered into?* And the indictment charges it to have been in the county of Essex."

In support of its conclusion the court cites only the case of *Dealy vs. U. S.*, 152 U. S., 539, in which case there was a conspiracy to defraud the United States, and the objection was made that the indictment did not allege that the overt acts set out in it were committed in the United States. After quoting the language of Mr. Justice Brown in *U. S. vs. Britton*, 108 U. S., 199-204, to the effect that the conspiracy alone constitutes the offense in prosecutions under section 5440, this court said:

"Hence, if the conspiracy was entered into within the limits of the United States and the jurisdiction of the court, the crime was complete and the subsequent overt act in pursuance thereof may have been done anywhere."

4. *Com. vs. Gillespie*, 7 S. & R., 469.

This case involved the same principle as *Noyes vs. State*, *supra*. The defendant was concerned with the agent of another alleged conspirator in selling lottery tickets in the State of Pennsylvania. *Gillespie was tried where he conspired.*

5. *Com. vs. Corlies*, 3 Brewster (Pa.), 575.

This is the decision of a single judge, holding a Court of Quarter Sessions in Philadelphia. It seems to be in point.



In delivering the opinion of the Court of Appeals in this case, Chief Justice Shepard, on the question of jurisdiction in conspiracy by the overt act cites the foregoing cases and the following in addition.

6. *Commonwealth vs. Bartelson*, 85 Pa. St., 482-489.

All that was decided in that case was that a conspiracy may be renewed from time to time by overt acts of the conspirators, so as to prevent the bar of the statute of limitations. The case contains a dictum to the effect that the venue in conspiracy may be laid in any county in which an overt act has been committed by any one of the conspirators. The only cases cited in support of this dictum are *Rex vs. Brisac*, 4 East., 151, and *People vs. Mather*, 4 Wend., 230, neither of which cases, as above shown, is in point. The court in *Com. vs. Bartelson* did not have before it a case in which an overt act was performed by one of the conspirators in the absence from that jurisdiction of the other defendants.

7. *People vs. Arnold*, 46 Mich., 268-275.

In that case it appeared that the original conspiracy was formed in Calhoun county, Michigan, but that subsequently the conspirators went to St. Joseph county in that State, in which latter county, pursuant to the conspiracy, they obtained money from a bank. All that that case decides, therefore, is that two or more conspirators may renew the original agreement by together doing something to carry it into effect, in which case the court where the renewal takes place has jurisdiction to try those who participated in such renewal.

8. *Bloomer vs. State*, 48 Md., 521.

The conspiracy in *Bloomer vs. State* originated in Maryland where the case was tried. The question in the case was whether testimony as to overt acts of the defendants in an-

other jurisdiction was competent, with other evidence, to establish the conspiracy in Maryland. *Bloomer was tried where he conspired.*

9. *People vs. Adams*, 3 Denio, 190-206.

This was not a case of conspiracy. The charge was obtaining money by false pretenses. The defendant in Ohio sent an innocent agent to New York, who there made the pretenses and for the defendant obtained money by means thereof. The court simply recognized a well-known application of the rule, *Qui facit per alium* <sup>per</sup> *per se*.

10. *State vs. Grady*, 34 Conn., 118.

This was another case involving the same principle. Pursuant to a conspiracy formed in New York the defendants robbed an express car on a train passing through Connecticut. The defendants were on trial, not for the conspiracy but for robbery.

11. *Ex parte Rogers*, 10 Tex. Apps., 655.

In that case it was held that when a conspiracy to commit forgery was entered into in Texas and some overt acts in pursuance of the conspiracy were performed in Texas, the courts of that State had jurisdiction, although the actual fabrication was committed in another State by an agent or co-conspirator of the defendant on trial. *Rogers was tried where he conspired.*

12. *Insurance Co. vs. State*, 75 Miss., 24-34.

This was an indictment against the agents of certain insurance companies for entering into a conspiracy to fix the insurance rates in Lauderdale county, Mississippi. The indictment did not state where the conspiracy was formed, and was objected to on that ground. The court overruled the

objection on the ground apparently that all the overt acts were committed in Lauderdale County. And the court expressly distinguishes that case from prosecutions in the Federal courts under section 5440, evidently being of opinion that if the indictment had been under section 5440 and the same state of facts had been presented the prosecution could not be sustained.

The rulings in the court below in this case go far beyond any other case known to the undersigned involving a prosecution under section 5440. If those rulings are correct any person having business dealings with any officer or agent of the United States is subject to such a prosecution in this District, no matter where or how long ago he had such dealings. All claims against the United States are finally adjudicated in Washington or there is correspondence direct or indirect with some official in Washington in regard to them. There is not a case in the reports involving a charge of conspiracy to defraud the United States which, if the rulings referred to be correct, might not have been begun in the Supreme Court of the District of Columbia. Whoever writes a letter to any official in Washington, or employs an attorney here, in connection with any claim against the United States, becomes liable to a prosecution here for conspiracy. And all those who are connected with him in the business or enterprise to which his letter or such employment of an attorney relates are in the same plight, whether they were consulted about the correspondence or the employment or not. A citizen of the United States living in the Philippine Islands may be dragged here for trial for a conspiracy entered into, if at all, in those islands, because some one here, unknown to him and without his authority, has entered an appearance in some department case of which he never heard and in which he has no interest. By the same token a resident of Washing-

ton or California may be transported "across seas" to the Philippines for trial on the ground that some agreement to which he was a party here has become a crime there by some trivial act done there by a stranger to him.

In Cooley's *Constitutional Limitations* (vol. 1, p. 459), the author, referring to a class of cases not unlike this case, says:

"It would have been a singular result of a revolution where one of the grievances complained was the assertion of a right to send parties abroad for trial, if it should have been found that an editor might be seized anywhere in the Union and transported by a Federal officer to every territory into which his paper might find its way, to be tried in each in succession for offenses which consisted in a single act not actually done in any of them."

In the recent case of *Ireland vs. Henkle*, 179 Fed. Rep., 993, Judge Lacombe refused to grant an order of removal from New York to Wyoming because, although the accused were indicted in Wyoming for conspiracy to defraud the United States, the evidence in the case showed that the conspiracy, if it existed, was entered into in New York, and consummated by an overt act in that State, before any of the overt acts in Wyoming occurred which were relied upon by the Government as justifying a prosecution in Wyoming.

This case is an adjudication directly in point. It is believed to be the only opinion expressed by a Federal judge outside of the District of Columbia in a case which required an opinion directly in point, except the emphatic opinion in the same direction of the three members of this court who spoke through Mr. Justice Peckham in *Hyde vs. Shine*.

A. S. WORTHINGTON,  
*Attorney for Petitioners.*

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No. 447

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

FREDERICK A. HYDE AND JOSEPH H. SCHNEIDER,  
PETITIONERS.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS,  
DISTRICT OF COLUMBIA.

MEMORANDUM FOR THE UNITED STATES.

# In the Supreme Court of the United States.

OCTOBER TERM, 1910.

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FREDERICK A. HYDE AND JOOST H.	} No. 798.
Schneider, petitioners,	
v.	
THE UNITED STATES.	

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS,  
DISTRICT OF COLUMBIA.

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## MEMORANDUM FOR THE UNITED STATES.

The determination of this case depends upon the principles of law governing conspiracies.

It is admitted that there is conflict among the decisions of the lower courts as to some of the most important of these principles, and that in view of the numerous prosecutions under the conspiracy statutes it is of vital importance to the United States, as well as to its citizens, that these principles be definitely settled by this court. Some of the questions presented in this case are involved in the cases of *United States v. Barber and Moon* (No. 444) and *United States v. Kissel* (No. 390), which have been heretofore argued at the present term of this court; but there are perhaps one or two phases of the law

of conspiracy here presented which did not directly arise in those cases.

For these reasons the United States does not oppose the granting of the writ of certiorari as prayed for by petitioners.

GEO. W. WICKERSHAM,  
*Attorney-General.*

NOVEMBER, 1910.

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U. S. Supreme Court, U. S.  
FILED.

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JAMES H. MCKENNEY,  
CLERK.

IN THE  
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

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No. 447.

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FREDERICK A. HYDE AND JOOST H. SCHNEIDER,  
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA.

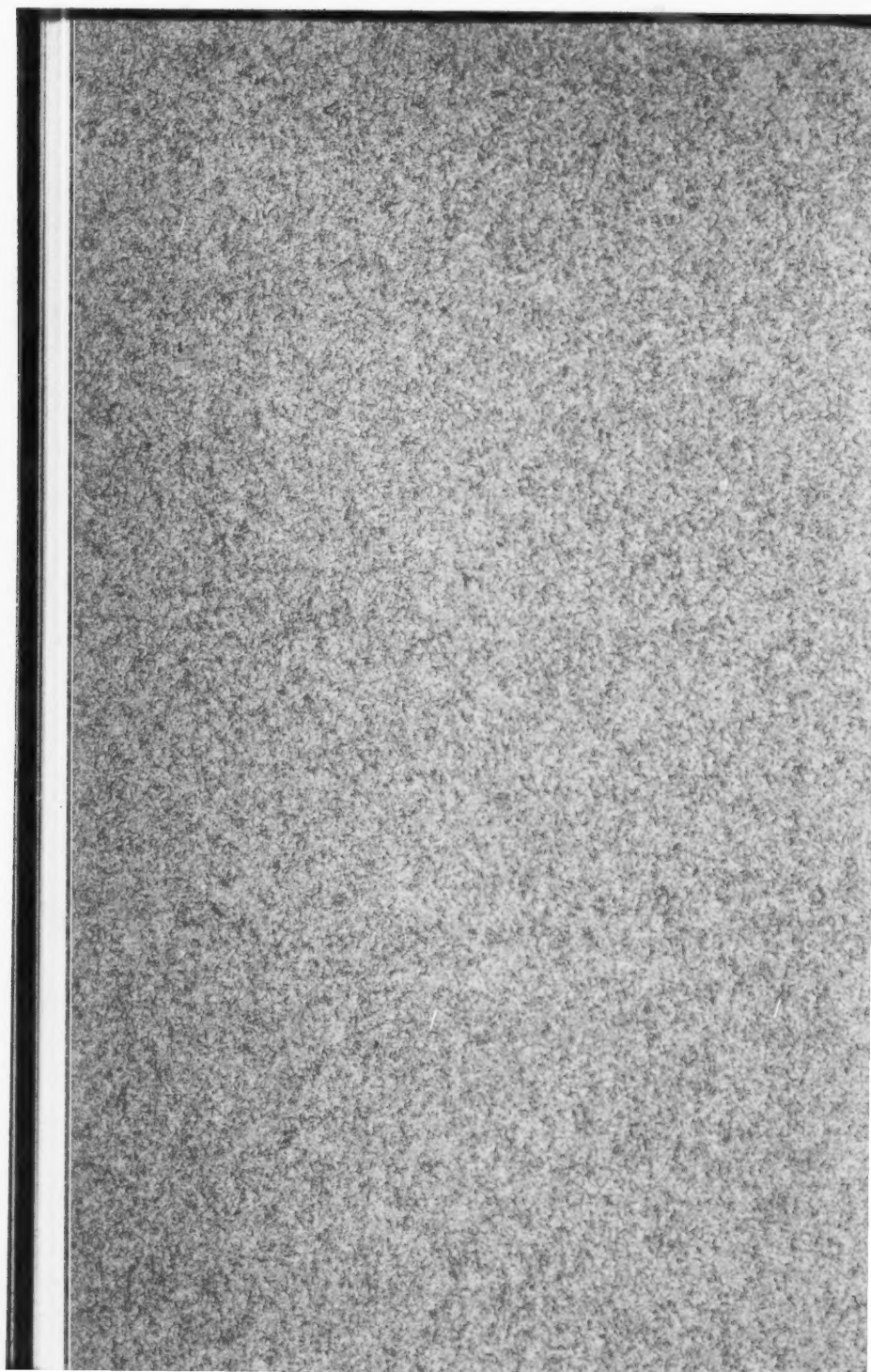
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BRIEF ON BEHALF OF THE PETITIONERS.

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A. S. WORTHINGTON,  
*Attorney for Petitioners.*





IN THE  
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OCTOBER TERM, 1911.

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*vs.*

THE UNITED STATES OF AMERICA.

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**BRIEF ON BEHALF OF THE PETITIONERS.**

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**Statement of the Case.**

By an act of Congress approved March 3, 1853 (10 Stat., 246), there was granted to the State of California for the purposes of public schools all of sections sixteen and thirty-six in each township in the State, with certain exceptions unimportant here. By an act of Congress approved February 14, 1859 (11 Stat., 388), a similar grant was made to the State of Oregon.

The legislature of California authorized the sale of the school lands so granted to it for \$1.25 per acre, limiting

the right of purchase by one person (of land not suitable for cultivation) to 640 acres, requiring every grantee to be a citizen of the United States and a resident of California, and providing that he should make affidavit, among other things, that he desired the land solely for his own use and benefit, and that he had made no contract or agreement to sell it.

The legislature of Oregon authorized the school lands of that State to be sold for \$1.25 per acre, limiting the amount to be purchased by one person to 320 acres, and requiring each applicant to make affidavit that he was a citizen of the United States and a resident of Oregon; that the proposed purchase was for his own benefit and not for the purpose of speculation; and that he had made no contract or agreement, express or implied, for the sale or disposition of the land.

The provisions of acts of Congress above referred to and of the acts of the legislatures of California and Oregon, respectively, are printed in full in the record in this case on pages 165 to 168.

Subsequent to these grants to the States of California and Oregon, and prior to the year 1897, most of the State lands in those States had been taken up by settlers. The school lands which were not taken up during that period were mainly school sections in the mountainous regions of the States, which were not worth the price asked for them and which in fact were very largely altogether worthless.

By an act of Congress approved March 3, 1891 (26 Stat., 1103), the President was authorized to create forest reservations. In carrying out the provisions of this act, the Government was embarrassed by finding that private persons had holdings within the limits of the desired reservations from which they could not lawfully be excluded. It was thought to be advisable to get rid of them by giving them the privilege of exchanging their holdings for outside lands. To that end, by a clause in an appropriation

act approved June 4, 1897 (30 Stat., 36), Congress provided as follows:

"That in cases in which a tract covered by an unperfected *bona fide* claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent; and no charge shall be made in such cases for making the entry of record or issuing the patent to cover the tract selected; *Provided further*, That in cases of unperfected claims the requirements of the laws respecting settlement, residence, improvements, and so forth, are complied with on the new claims, credit being allowed for the time spent on the relinquished claims."

When this act was passed it seems not to have occurred to Congress that within the limits of forest reservations were numerous school-land sections which were owned by the States and which the States were likely to continue to own because they were either worthless or so nearly so that no one would pay the State price for them. But when the act of 1897 became known in California and Oregon it was seen that it had made these worthless lands valuable for the purposes of the exchange authorized by that act. At once there was a rush to acquire the titles to the school sections in the mountains. And it is a fact not to be disputed that in obtaining such titles not much attention was paid to the provisions of the State laws which looked to the granting of the lands only to *bona fide* settlers and not to speculators. But the authorities of both States evidently saw no reason for interfering with this business, because they were getting for the lands more than they were worth. The result was that applications and assignments were filed in the State land offices in "bunches." There is no question that in 1898 and 1899, when nearly all the titles to the school lands

involved in this case were obtained, it was well known to all the authorities of those States that the business was being conducted in this manner, and it was allowed to go on because the money which the States obtained in this way was needed to pay the expenses of carrying on their schools, and if it was stopped the States would have the worthless lands on their hands. And although nearly eight years have elapsed since these transactions became a matter of universal knowledge in the United States, it is believed that in not a single case has any attempt been made by either California or Oregon to recover any of the school sections of which it is charged in this prosecution they were "defrauded."

The charge upon which these petitioners were tried and convicted is a violation of section 5440 of the Revised Statutes, reading as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars, and to imprisonment not more than two years."

The indictment was filed in the Supreme Court of the District of Columbia on the 17th day of February, 1904. It occupies the first ninety-four pages of the record in this case. While in form it charges forty-two separate conspiracies and more than that many overt acts, in substance and effect it charges but one conspiracy, and all the overt acts relate to that single charge. The first count sets forth the alleged conspiracy in full, and in the other counts the pleader undertook to adopt the greater part of the first count by reference thereto.

The indictment first recites that in October, 1901, and thence until February, 1904, the petitioner Hyde and one

John A. Benson were engaged in the land business in California and Oregon; that one Dimond during that period was an employee, agent and attorney of Hyde and Benson in that business; that the petitioner Schneider during the same period was an agent and employee for hire of Hyde and Benson in the land business; that one Harlan and one Valk during that period were clerks in the General Land Office in Washington, having duties to perform in connection with forest reserves and the exchange of land in forest reserves under the act of June 4, 1897; and that one Allen and one Taggart were in the employ of the Government—Allen as a forest superintendent and Taggart in the public land service. After this recital the indictment charges that Hyde, Benson, Dimond, and Schneider, on the 30th of December, 1901, "at Washington aforesaid in the said District of Columbia," conspired with other persons to the grand jury unknown to defraud the United States out of the title to divers large tracts of its public lands open to selection in lieu of lands in forest reserves in California and Oregon, by obtaining school lands in forest reserves from the States of California and Oregon by fraudulent methods and exchanging the titles so obtained for Government lands outside of forest reserves. The fraudulent methods referred to were getting the State lands by the use of fictitious names and forged papers and by inducing persons to apply to the States for land who were not entitled thereto, and by inducing qualified persons to apply to the States for land ostensibly for their own benefit, but in reality for the benefit of Hyde and Benson. (In so far as these charges related to the use of forgery and fictitious names, they were abandoned at the trial, the court refusing, however, to exclude the evidence relating to such charges—a ruling which was the subject of an exception which will not be discussed in this brief—803, 816.)

It is further charged that it was a part of the conspiracy that Hyde and Benson were to bribe Harlan and Valk to

expedite their business in the General Land Office and to assist them in every way in their power—also that Hyde and Benson were to bribe Allen and Taggart to furnish them information which would aid Hyde, Benson, Dimond, and Schneider in securing the establishment of forest reserves. Then follow (6) the specific charge against Dimond that he, as employee, agent, and attorney of Benson, would assist Hyde and Benson in their alleged fraudulent business by appearing before the public officers of the Department of the Interior and the General Land Office in Washington, and the specific charge against Schneider that he, "in the capacity of their employee for hire," would aid and assist Hyde and Benson in obtaining from the States of California and Oregon by the methods aforesaid school lands in forest reserves to be relinquished to the United States in exchange for other lands outside of forest reserves.

Most of the overt acts charged in the indictment consist in the filing in the General Land Office by Dimond, as attorney for Hyde, of formal appearances in different selection cases. In each of the counts Nos. 35 to 40, both inclusive, the overt act charged is the payment of money by Benson to either Valk or Harlan. The only other overt acts alleged are the following:

(1) In the 3d count (13, 14), that Hyde in March, 1903, "did cause to be transmitted by mail" from a local land office in California to the General Land Office in Washington a notification that one Burton E. Rice was authorized as Hyde's agent to post notices on certain land.

(2) In the 15th count, that Hyde on July 29, 1903, caused to be transmitted by mail from the United States Land Office at Vancouver to the Commissioner of the General Land Office at Washington a written notification to the Commissioner, signed by Hyde for C. W. Clarke, that Clarke appealed to the Secretary of the Interior from a certain decision of the Commissioner, with an assignment of errors.

(3) In count 22, that Hyde on March 31, 1902, "did cause to be presented to said Commissioner of the said General Land Office, by the hand of the said Henry P. Dimond," a paper signed by Hyde, notifying the Commissioner that one S. E. Kieffer was authorized and appointed as Hyde's agent to post notices on the ground described in a certain application, and to make affidavit of the posting.

Another overt act by Hyde is charged in the 29th count (76), but as that count was abandoned by the Government at the trial and a verdict of not guilty as to all the defendants was rendered as to it by direction of the court, it need not be further considered.

It should be noted here that while the indictment throughout assumes that Hyde and Benson were in business together, it turned out at the trial that they had separate and independent offices in San Francisco—each of them having his own records and clerks. The joint relation between them grew out of a contract by which Benson was to be compensated for locating land to be selected for exchange for the school lands in the Cascade Forest Reserve in Oregon, the title to which had been acquired by Hyde for himself or his clients (208).

Shortly after the indictment was found removal proceedings against Hyde and Dimond were instituted by the Government before a United States commissioner in California. They employed counsel and resisted the application. Many weeks were occupied in the taking of testimony, with the result that the commissioner ordered their removal. Thereupon, Hyde applied to the United States circuit court for writs of *habeas corpus* and *certiorari*. His petition having been there dismissed, he brought the case to this court. In an opinion delivered by Mr. Justice Brown the majority of the court, on May 29, 1905, affirmed the judgment of the circuit court (*Hyde vs. Shine*, 199 U. S., 62). There was a dissenting opinion in the case by Mr. Justice Peckham, concurred in by Mr. Justice White and Mr. Jus-



tice McKenna. One of the grounds upon which counsel for Hyde relied was that it was shown by the evidence in the removal proceedings that if any such conspiracy as was charged in the indictment was entered into by him it was entered into in California and not in the District of Columbia. Counsel for the Government claimed that even if that were so the Supreme Court of the District of Columbia had jurisdiction by reason of the fact that the overt acts charged in the indictment were committed in this District. On this subject Mr. Justice Brown said:

"As the indictment in this case charges that the conspiracy was entered into in the city of Washington, it becomes unnecessary to consider whether an indictment would lie within the jurisdiction where the overt act was committed, though there are many authorities to that effect. *King ex. Brizac*, 4 East. Rep., 164; *People ex. Mather*, 4 Wend. (N. Y.), 229; *Commonwealth ex. Gillespie*, 7 S. & R., 469; *Noyes ex. State*, 41 N. J. Law, 418; *Commonwealth ex. Corlies*, 3 Brews. (Pa.), 575."

He added, however:

"But we do not wish to be understood as approving the practice of indicting citizens of distant States in the courts of this District, where an indictment will lie in the State of the domicile of such person, unless in exceptional cases where the circumstances seem to demand that this course shall be taken. To require a citizen to undertake a long journey across the continent to face his accusers and to incur the expense of taking his witnesses and of employing counsel in a distant city, involves a serious hardship to which he ought not to be subjected, if the case can be tried in a court of his own jurisdiction."

The dissenting justices held that since it was averred in the petition for the writs of *habeas corpus* and *certiorari* that the conspiracy, if any existed, was entered into in California or Oregon, the circuit court should have inquired

and determined whether that averment was true, on the ground that if Hyde and Dimond had not entered into the alleged conspiracy in the District of Columbia "they could not be guilty of the crime charged in the indictment." And Mr. Justice Peckham further said:

"I think this is not the case for the application of the rule stated in the cases cited in the opinion of the court. Those from New York were based upon a matter of public policy, where the purpose was to overturn proceedings in assessments and taxation, in which the public was interested, and the courts refused in such cases to grant the writ. The result of the refusal in this case is to prevent the review of the findings of the commissioner before whom the original proceeding was had, upon the question of probable cause. I admit that the weight of evidence will not, in such cases, be reviewed here, but evidence which conclusively rebuts the presumption of probable cause arising from the indictment, and which is uncontradicted, may be looked at, and a finding of probable cause reversed. In order to refer to it the evidence must be part of the record, and in such a case as this the application for a writ of certiorari to bring up the evidence which the petitioner avers shows such fact is not addressed to the discretion of the court, but, on the contrary, the petitioner has the right to demand that it shall be granted. *The right is none the less when the want of probable cause rests upon conclusive evidence of the absence of the defendants from the District at the time when the indictment alleges the conspiracy was formed in such District. If defendants were not then there, they could not be guilty of the crime charged in the indictment.* This case is an extreme illustration of the very great hardship involved in sending a man 3,000 miles across the continent, from California or Oregon, to this District for trial, where he is to bring his witnesses, and where on such trial it will appear that the court must direct an acquittal because the averment of the formation of the conspiracy at Washington, D. C., is shown to be false to a demonstration.

"The expense to a defendant in his necessary preparation for trial, and in procuring the attendance of witnesses in his behalf from such a distance, must necessarily be enormous; and in many, if not in most, cases, utterly beyond the ability of a defendant to pay. The enforcement of the criminal law should not be made oppressive in such cases, and therefore, when it appears there was no probable cause to found the indictment upon, the order of removal should be refused."

After this action of this court all the accused gave bail in California for their appearance in the Supreme Court of the District, when their presence was required.

On November 13, 1905, Hyde, by his attorneys, filed a demurrer to the indictment (94). The demurrer was overruled (96). A special appeal from the order overruling the demurrer was allowed by the Court of Appeals of the District of Columbia, and in an opinion delivered by Mr. Justice McComas on April 6, 1906, the Court of Appeals affirmed the order (*Hyde vs. U. S.*, 27 App. D. C., 362). The principal objections made to the indictment were: (1) the extreme generality of the charge as to the nature of the alleged conspiracy, and (2) the charging of over 40 different conspiracies, all but one of which were described by a vague reference to the first count. As to the first of these objections the Court of Appeals held that the Government must prove a conspiracy as general as that charged. The second objection was obviated at the trial by the court deciding that the indictment would be held to charge a single conspiracy, all the overt acts relating to that charge (819). For these reasons the demurrer will not be discussed nor relied upon in this court.

On the first day of April, 1908, Hyde and Schneider for the first time appeared in court for arraignment. On that day each of them filed a plea in abatement (137-138), assailing the validity of the grand jury that found the indictment. A demurrer to these pleas was sustained. There-

upon the appellants were formally arraigned and each of them pleaded "Not guilty" (141). The case came on for trial before Mr. Justice Stafford and a jury on April 2, 1908. The trial lasted until June 22, 1908. By order of the court at the beginning of the trial the jury were put in charge of bailiffs and remained so in custody until the termination of the case on June 22, 1908. Hyde and Schneider were found guilty on all the counts except two, which the Government abandoned. A verdict of not guilty was rendered on all the counts as to Benson and Dimond (146-865).

Hyde was sentenced to two years' imprisonment and to pay a fine of ten thousand dollars. Schneider was sentenced to imprisonment for one year and two months and to pay a fine of one thousand dollars (159). They both appealed to the Court of Appeals of the District of Columbia. Pending the appeal both Hyde and Schneider were admitted to bail, and under the terms of their bail bonds they are still at large. The Court of Appeals, as to both the appellants, affirmed the judgment of the Supreme Court of the District on October 11, 1910. The opinion of the Court of Appeals was delivered by Mr. Chief Justice Shepard, and will be found on pages 865 to 883 of the record. Hyde and Schneider filed a petition in this court, asking the issuance of a writ of *certiorari*. The Attorney General was duly notified of the application. He filed a memorandum on behalf of the United States, in which he said:

"The determination of this case depends upon the the principles of law governing conspiracies.

"It is admitted that there is conflict among the decisions of the lower courts as to some of the most important of these principles, and that in view of the numerous prosecutions under the conspiracy statutes it is of vital importance to the United States, as well as to its citizens, that these principles be definitely settled by this court. Some of the questions presented in this case are involved in the cases of *United States vs. Barker and Moon* (No. 441) and *United States vs. Kissel* (No. 390), which have been heretofore

argued at the present term of this court; but there are perhaps one or two phases of the law of conspiracy here presented which did not directly arise in those cases.

"For these reasons the United States does not oppose the granting of the writ of certiorari as prayed for by petitioners."

The writ of *certiorari* having been allowed, the usual stipulation was filed signed by counsel for the petitioner and by the Attorney General, agreeing that the transcript which was filed with the petition might be taken as a return to the writ (885).

As will be seen from the opinion of the Court of Appeals of the District of Columbia in this case, which begins on page 865 of the record, a large number of questions were argued in that court growing out of exceptions taken during the trial. In their petition here for the writ of *certiorari* Hyde and Schneider said that they asked the court to review the case "for the purpose of having this court decide the following important and fundamental questions of law":

"I. Whether, notwithstanding the provisions of the Constitution of the United States requiring that an accused person shall be tried in the State where his offense is alleged to have been committed, a person accused of having entered into a conspiracy in California in violation of section 5440 of the Revised Statutes, may, against his protest, lawfully be tried for that offense in the District of Columbia.

"II. Whether such accused person may be prevented from having the preceding question determined by this court (without being compelled to resort to a petition for a writ of *habeas corpus*) by the erroneous statement in the indictment that the alleged conspiracy was entered into in the District of Columbia.

"III. Whether such accused person may be convicted after his alleged offense is barred by the statute of limitations, because without his knowledge or participation some other person accused with him of

the same offense has done some act in pursuance of such alleged conspiracy within the period of limitations."

The second of the three questions which by the petition for *certiorari* the court was asked to review, was in substance whether the accused could be prevented from having the first question determined by this court because the Government had seen fit to charge in the indictment that the alleged conspiracy was entered into in the District of Columbia, when, as a matter of fact, if there was any conspiracy, it was entered into in the State of California. That question is eliminated by the action of this court in granting the writ of *certiorari* and only the two remaining subjects will be discussed in this brief; one as to the effect of the overt act in giving jurisdiction in an indictment for conspiracy under section 5440; and the other as to the effect of overt acts by some of the accused in depriving the petitioners of the benefit of the statute of limitations.

A supplemental brief will be submitted, in which certain other of the points determined by the court of appeals will be discussed. It is believed the questions that will so be presented in a separate brief are of great importance with reference to future procedure not only in the courts of the District of Columbia but in the federal courts generally, and that any one of them would justify the interposition of this court.

It is in order next to state the several rulings of the courts below bearing upon the effect of the overt acts charged in this case, first upon the question of jurisdiction and next upon the statute of limitations.

In the evidence both on behalf of the Government and on behalf of the defendants, it appeared that all the defendants, for a number of years prior to the earliest day fixed in the indictment for the formation of the alleged conspiracy and for many years before that date and down to the time of the trial, resided in California, except that some time in

December, 1901, Schneider left the employment of Hyde, and went to Tucson, Arizona, where he resided up to the time of the trial. Schneider had never been in the District of Columbia until just before the indictment was found, when he was brought to Washington by the Government and taken before the grand jury and attempted to be used as a witness for the United States (761-2). Because of his refusal to testify before the grand jury, apparently, he was indicted in this case with the others. During the period covered by the alleged conspiracy it appeared that Hyde was in the District of Columbia only once, and then for a few hours, and it was not claimed that during that time he did or said anything which had any relation to this case. And as to the other two defendants, Benson and Dimond, while the testimony showed that each of them was in Washington a number of times during the period of the operations of the alleged conspiracy, it was not contended by the Government that either of them entered into the conspiracy in this District.

It is not deemed necessary to trouble this court with references to the testimony on these subjects, inasmuch as the record discloses that it was conceded by the Government and by the court at the trial that it was not shown that any conspiracy was entered into in this District by any of the defendants.

At the close of the evidence on behalf of the Government counsel for the several defendants moved the court to instruct the jury to render a verdict of not guilty as to all of them upon the ground that by the Government's own evidence in the case it appeared that no such conspiracy as was charged in the indictment on trial was entered into in the District of Columbia. Counsel for the Government opposed the motion upon the ground that while it was true that the evidence did not tend to show that the conspiracy was entered into in the District of Columbia, it did show that certain of the overt acts charged in the indictment were committed in the District of Columbia, and that thereby the trial court had jurisdiction. In the oral

discussion of this question before the court counsel for one of the defendants having said to the court that he claimed that the Government was "bound to show that the conspiracy was organized and made effective here," the following colloquy occurred between the court and Mr. Baker, the United States Attorney for the District of Columbia:

"THE COURT: Yes, I know; but I do not know that they claim that they can prevail here except on the theory that it is sufficient to show an overt act here. Is that right?

"MR. BAKER: That is our position, if the court please.

"THE COURT: *They stand on that theory entirely. If that theory is wrong, of course they fall*" (675).

This view of the law was carried into the instructions given to the jury by the court at the close of the evidence. The specific rulings on this subject complained of will be set out in full in the assignments of error which follow this statement.

As to the effect of overt acts in relation to the Statute of Limitations the questions raised on this record arose in the following manner:

It is charged in the indictment that Schneider was an agent and employee for hire of Hyde and Benson, and that in that capacity he was to aid them in obtaining the State lands.

It turned out at the trial, by all the evidence, both for the Government and for the defense, that Schneider had never been in the employ of Benson at all, but was in the employ of Hyde alone from 1878 until some time in December, 1901. Hyde was the owner of several ranches, on which he raised cattle and other live stock. During the whole period of his employment Schneider's principal business was having charge of these ranches. Occasionally, however, he aided Hyde's clerks in the latter's office in San Francisco in which Hyde carried on his land business—the ex-



tent to which he so aided and the extent of his knowledge as to the nature of Hyde's business in the lieu-land selection business being matters of dispute at the trial. It further appeared without question that in August, 1898, Schneider, as Hyde's employee and under Hyde's instructions, went to Oregon and there obtained a large number of signatures to applications for land in the Cascade Forest Reserve in Oregon and assignments and powers of attorney in relation to such applications. It also appeared that Schneider about the same time induced three persons in California to make applications for land in forest reserves in that State in the same way (Fontaine, 405; Lyndall, 471, and Donovan, 446). On the other hand, it was not disputed at the trial or in the Court of Appeals by the Government that no act of Schneider's relating in any way to the charges involved in this suit was shown to have been committed by him later than the summer of 1899, and that, as above stated, in December, 1901, he left Hyde's employ for good and went to Arizona, and thereafter had no further connection with Hyde's land business in any way. He never had any connection with Benson's land business. There was no evidence tending to show that Schneider in anywise benefited, or that it was ever intended that he should benefit, in any way by Hyde's operations in the lieu-land selection business. He received a regular salary during the whole period that he was in Hyde's employ, which covered all his services on the ranches and in Hyde's office.

In the fall of 1902 S. J. Holsinger, a "special agent" of the General Land Office, saw Schneider at Tucson, in Arizona. On the 12th of November, 1902, Holsinger wrote a letter to the Commissioner of the General Land Office, in which he gave statements of an alleged confession made to him by Schneider (336-341). This paper was admitted in evidence as against Schneider only. Holsinger testified as a witness for the Government that Schneider made to him substantially the statements contained in this paper (336-341). And as to this he was corroborated largely by W. J. Burns

(390) and J. Knox Corbett (395), Burns being another "special agent" of the Government, and Corbett postmaster at Tucson.

It was admitted at the trial that some of the statements in this alleged confession were without any foundation, and Schneider denied having made many of the statements imputed to him. We are not now concerned with the truth or falsity of these statements, but it is necessary to refer to the alleged confession as such on account of its relation to certain rulings of the court relating to the statute of limitations.

It further appeared by undisputed evidence that after Holsinger made this report unsuccessful efforts were made by other agents of the Government to induce Schneider to sign an affidavit embodying statements made in the Holsinger report, and that, as before mentioned, he was brought to Washington and taken before the grand jury, and that he refused to make any such affidavit or to testify before the grand jury or to give any further information to the Government (761-2).

In this state of the case the court, against the objection and subject to the exception of all the defendants, when the case was about to go to the jury made the several rulings regarding the application of the statute of limitations to the case which are set out verbatim in the assignment of errors.

### **Assignment of Errors.**

The Court of Appeals of the District of Columbia erred:

#### **I.**

In sustaining the refusal of the trial court to give to the jury the following instruction:

"The jury are instructed to find a verdict of not guilty as to all the defendants" (800).

## II.

In sustaining the action of the trial court in giving to the jury in the final charge the following instruction:

"If the defendants agreed together to defraud the United States out of the lands described in the general words of the indictment, and to do it by the fraudulent means there stated, and to accomplish their said purpose by doing or having done here in the District of Columbia any of the things alleged in the indictment as to be done here, and any of such things were done here pursuant to said agreement, then it is the same as if they had all been here and actually engaged in the doing of them. As far as such acts are concerned, they are to be treated as having been performed here by the defendants in person; and, moreover, such acts are characterized by the purpose for which they were performed. Being performed, as we are now supposing for the moment that they were, for the purpose of carrying out the said agreement of the defendants, said agreement itself is contained in the acts, and the conspiracy is here just as truly as if the defendants were all here in person, doing those things with the common mind and purpose which contemplated them." (849).

## III.

In sustaining the action of the trial court in refusing to give to the jury in the final charge the following instruction:

"12. If the jury are not satisfied by the evidence beyond a reasonable doubt that the defendant Dimond in filing or causing to be filed in the Office of the Commissioner of the General Land Office in Washington the several papers which are set forth as overt acts in counts 2 to 14; 15 to 21; 23 to 28; and 30 to 34—all inclusive—of the indictment, was in collusion with one or more of the other defend-

ants in attempting to defraud the United States, by the means set forth in the indictment, or some of such means, they will render a verdict of not guilty as to all the defendants as to each of said counts" (801-2).

#### IV.

In sustaining the action of the trial court in refusing to give to the jury the following instruction:

"The jury are instructed to render a verdict of not guilty as to counts numbered 1, 15, 22 and 29" (801).

#### V.

In sustaining the action of the trial court in giving to the jury, in the final charge, the following instruction:

"If Schneider was a member of the conspiracy back of the three-year period, and it was a part of that conspiracy that acts mentioned in the indictment should be done in furtherance of the conspiracy from time to time thereafter as occasion might require through a series of years until the object of the conspiracy should have been accomplished, although he himself was not to do and did not do anything within the three-year period, and if after doing his part he remained acquiescent, expecting and understanding that said further acts would be performed by the other members of the conspiracy, and did nothing to repudiate it or withdraw from it, the acts of the other members of the conspiracy in furtherance of it would be his acts, and would have the same effect against him as if he had done them himself. He would still be acting through his colleagues. He might be playing his part by keeping still as much as he did formerly by acting. If these titles were fraudulent, as alleged, and he assisted in procuring them for the purpose of having them used thereafter by other members of the conspiracy in effecting the fraudulent exchange alleged in the indictment he was setting in

motion a force which took him along with it as long as he continued acquiescent and those things were being done which he had contemplated and agreed should be done" (849, 850).

## VI.

In sustaining the action of the trial court in giving to the jury, in the final charge, the following instruction:

"So, too, if one drops out of a conspiracy, he remains liable for what was done while he constituted a part of it; and he may continue to be in the conspiracy and to be bound by the acts of his co-conspirators in furtherance of it, even after he has ceased to act in it himself, if he has not in fact withdrawn from it" (850).

## VII.

In sustaining the action of the trial court in giving to the jury in the final charge the following instruction:

"Now, if he [Schneider] had stood by that, and had gone on and disclosed all he knew about the matter, and said: 'I have nothing more to do with this matter,' nothing that could have been done by the others after that could affect him at all. He would have been out of it; he would have repudiated it. As bearing on the effect of what he did there, if you find he did it, you are to consider what he did afterwards. If, after having made his disclosure as far as he did, he shut his mouth and said: 'I will not say anything more about this matter; the Government shall not get anything more out of me,' that is not an act by him in furtherance of the conspiracy, but it is a piece of evidence to be considered by you as bearing on the question whether he was acquiescent—what his attitude of mind toward the conspiracy was.

"If he had stood on his disclosure, you might have said: 'Well, he is out of it from now on'—but in connection with that you are to consider what he said

afterwards. If you find that he closed his mouth and refused to say anything more about the matter and kept still in the interest of the others, you would have a right to say that that showed that he was still acquiescent in the matter. It would neutralize, if you chose to treat it so, the effect of his former declaration, that he did know, and was willing to disclose" (852).

### VIII.

In sustaining the action of the trial court in refusing to give to the jury the following instruction:

"The jury are instructed that unless they should, beyond a reasonable doubt, find from the evidence that the defendant Schneider consciously and intentionally participated in the conspiracy alleged in the indictment (if they should find such conspiracy to have been proven by the evidence), within three years prior to the 17th day of February, 1904, the date of the finding of the indictment, then they should acquit the defendant Schneider.

"And the jury are further instructed that in order to find that the defendant Schneider consciously and intentionally participated in said alleged conspiracy, they must first find that he was a party to this original conspiracy, if it existed, and within said years participated in some act done in furtherance of said conspiracy" (806-807).

## ARGUMENT.

### I.

#### The First, Second, Third, and Fourth Assignments of Error.

*Involving the question whether the mere fact that one of the parties to an alleged conspiracy to defraud the United States, or an agent of one of them, has done an act in the District of Columbia alleged to have been in pursuance of the alleged conspiracy, gives jurisdiction to the Supreme Court of the District of Columbia to prosecute all the alleged conspirators under Section 5440 of the Revised Statutes, although the alleged conspiracy itself was formed elsewhere.*

It will simplify this discussion to have a clear understanding of just what the question to be decided is. This is the more important because both in the court below in this case and in other cases in the Federal courts there has been, in the consideration of this question, frequent reference to principles and decisions which seem to counsel to have no bearing whatever upon the proposition involved in these assignments of error.

The classes of cases which are here referred to as not pertinent in this connection are the following:

*First.* Those in which the overt act involved is in itself a crime against the laws of the jurisdiction in which it is committed, and the prosecution is for that crime and not for the conspiracy.

*Second.* Those cases in which, although the accused was not personally present in the jurisdiction of the prosecution when the conspiracy was entered into, he made the agreement in that jurisdiction, either through an agent there

present representing him or by correspondence through the mails or over the telephone.

It is believed that there has been no actual case in which the conspiracy was charged to have been formed by telephone, but that possibility was discussed in his brief by the Attorney General in *Price vs. United States*, 216 U. S., 488, and was given as one of the reasons for dismissing a petition for a writ of *habeas corpus* (in an interstate extradition case) by District Judge Holt in *Ex parte Hoffstot*, 180 Fed., 240.

*Third.* Those in which, although the original conspiracy was formed elsewhere, the persons on trial have come into the jurisdiction of the prosecution and have there either expressly or tacitly continued their unlawful agreement by acting together in that jurisdiction in attempting to effectuate the object of the conspiracy.

The question here is whether when it is charged that A and B have entered into a conspiracy in one jurisdiction, and A alone has thereafter gone to another jurisdiction and done some act which it is claimed was in pursuance of the conspiracy, B, nothing further appearing, can be brought to trial for the alleged conspiracy in the latter jurisdiction upon an indictment charging that he entered into the alleged conspiracy with A in that jurisdiction.

If that question be answered in the negative, it is an end of this prosecution. If it be answered in the affirmative, then the further question arises whether it is sufficient to give jurisdiction that an innocent agent of one of the alleged conspirators has done something in furtherance of the conspiracy in the district where the indictment is found.

If that question be answered in the negative, it is an end of this prosecution. If it be answered in the affirmative, the next question is whether the fact that one of the alleged conspirators has placed a paper which relates to the matters



involved in the alleged conspiracy where in the ordinary course of business it would be sent to the place where the indictment is found, and it is so sent, the jurisdiction is established.

This situation grows out of the fact already referred to that the trial court held that the indictment charges but a single conspiracy. If therefore the jury found that the conspiracy had existed and found further that any one of the overt acts charged was committed in this District it made no difference whether any of the other overt acts were established or not.

At the outset of this discussion it is to be remembered that the conspiracy alone constitutes the offense which is made criminal by section 5440.

In *U. S. vs. Britton*, 108 U. S. 199, 204, it was held that an indictment for conspiracy under section 5440 was fatally defective because it did not appear from the indictment that the unlawful agreement was one by which the United States could be defrauded within the meaning of section 5440. Counsel for the Government endeavored to eke out the insufficient charge in the conspiracy clause of the indictment by reference to the overt acts, but the court, speaking through Mr. Justice Woods, said:

"The offense charged in the counts of this indictment is a conspiracy. This offense does not consist of both the conspiracy and the acts done to effect the object of the conspiracy, but of the conspiracy alone. The provision of the statute, that there must be an act done to effect the object of the conspiracy, merely affords a *locus penitentiae*, so that before the act done either one or all of the parties may abandon their design, and thus avoid the penalty prescribed by the statute. It follows as a rule of criminal pleading that in an indictment for conspiracy under section 5440, the conspiracy must be sufficiently charged, and that it cannot be aided by the averments of acts done by one or more of the conspirators in further-

ance of the object of the conspiracy. *Reg. vs. King*, 7 Q. B., 782; *Commonwealth vs. Shedd*, 7 Cush., 514."

In *Pettibone vs. U. S.*, 148 U. S., 197, 202, it was held that an indictment under section 5440 should be quashed, because while it charged a corrupt agreement to obstruct the administration of justice in a Federal court, it was not stated in the charging part of the indictment that the defendant had notice that justice was being administered in that court. Again the court said:

"The general rule in reference to an indictment is that all the material facts and circumstances embraced in the definition of the offense must be stated, and that, if any essential element of the crime is omitted, such omission cannot be supplied by intendment or implication. The charge must be made directly and not inferentially or by way of recital. *United States vs. Hess*, 124 U. S. 483, 486. And in *United States vs. Britton*, 108 U. S. 199, it was held, in an indictment for conspiracy under section 5440 of the Revised Statutes, that the conspiracy must be sufficiently charged, and cannot be aided by averments of acts done by one or more of the conspirators in furtherance of the object of the conspiracy."

In *Dealy vs. U. S.*, 152 U. S., 539, 546, which came to this court by writ of error after the conviction of the plaintiff in error, under section 5440, for conspiring to defraud the United States, it was urged in his behalf that the indictment was defective because it did not charge that any of the overt acts relied upon were committed within the limits of the United States. In overruling this objection, the court said:

" \* \* \* While it is true there is no specific allegation that the act of inducing and persuading was done within the jurisdiction of the court, and while it may be possible, as counsel suggest, that so far as this record discloses all the solicitation and persuasion exercised by the defendant was done

within the limits of Canada, and outside the jurisdiction of the trial court, yet the solicitation was to do a wrongful act within the State of North Dakota, *in re Polliser*, 136 U. S. 257, 265, and that solicitation was not a part of the conspiracy, but subsequent to and in furtherance of it. The gist of the offense is the conspiracy. \* \* \* Hence, if the conspiracy was entered into within the limits of the United States and the jurisdiction of the court, the crime was then complete, and the subsequent overt act in pursuance thereof may have been done anywhere."

This construction of section 5440 was again followed in *Bannon vs. U. S.*, 156 U. S., 464-468-9, and was referred to with approval when Hyde's case was here before (199 U. S., 62-76).

This court has many times said that in construing a clause of the Constitution, consideration should be given to the historical circumstances attending its framing and adoption and to the contemporaneous understanding of its terms. (*Pollok vs. Farmers' Loan and Trust Company*, 157 U. S., 429-558; *Capital Traction Co. vs. Hof.*, 174 U. S., 5, 6; *Knowlton vs. Moore*, 178 U. S., 41-95.)

Such an investigation, it is believed, will be especially valuable in the present case in view of the origin of the dicta to be found in some of the reported cases to the effect that the crime of conspiracy is committed wherever anything is done to forward the objects of the conspiracy.

The provisions of the Constitution of the United States, which are involved in this discussion, are the following:

Section 2 of article III of the original Constitution:

"The trial of all crimes \* \* \* shall be held in the State where the said crimes shall have been committed; but when not committed within any State the trial shall be at such place or places as the Congress may by law have directed."

### The sixth amendment to the Constitution:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation."

In the reign of Henry VIII an Act of Parliament was passed entitled "An Act whereby divers offenses be made high treason: and taking away all sanctuaries for all manner of high treason." The second section of the act provided that those who should do certain things should be adjudged traitors and upon conviction of high treason should suffer death and other penalties. The third section provided that no person convicted of high treason should have the benefit or privilege of any manner of sanctuary. The fourth section is as follows: \*

"IV. \* \* \*. Be it enacted by authority aforesaid, that if any of the King's subjects, denizens or other, do commit or practice out of the limits of this realm, in any outward parties, any such offenses, which by this act are made, or heretofore have been made, *treason*, that then such treasons, whatsoever they be, or *wheresoever they shall happen so to be done or committed, shall be inquired and presented* by the oath of twelve good and lawful men, upon good and proper evidence and witness, *in such shire and county of this realm, and before such persons as it shall please the King's Highness to appoint by commission under his great seal*, in like manner and form as treasons committed within this realm have been used to be inquired or presented (3) and that upon every indictment and presentment found and made of any such treason, and certified into the King's Bench, like process and other circumstance shall be there had and made against the offenders, *as if the same treasons, so presented, had been lawfully found to be done and committed within the limits of this realm.* (4) And that all process of

outlawry hereafter to be had and made within this realm against any offenders in treason, being resiant or inhabited out of the limits of this realm, or in any of the parties beyond the sea, at the time of the outlawry pronounced against them, shall be as good and as effectual in the law to all intents and purposes, as if such offenders had been resident and dwelling within this realm at the time of such process awarded, and outlawry pronounced."

The attempt to use this statute against the citizens of the American colonies of Great Britain was one of the moving causes of the Revolution. A thorough and able account of these efforts and their result is contained in an essay entitled "The Constitutional Right to a Trial by a Jury of the Vicinage," by Henry G. Connor, in *University of Pennsylvania Law Review and Law Register* for January, 1909. He says in part:

"It is undoubtedly true that in the 35th year of the reign of Henry VIII. when new treasons were being created by a truculent Parliament to gratify the changing ecclesiastical and matrimonial whims of the King, an act was passed empowering him to appoint commissioners for the trial of persons accused of treason at any place in the realm that the King should designate. This, like many other statutes passed in the reign of the Tudors and Stuarts was not always recognized as consistent with the spirit of the British Constitution. When, in 1768, it was invoked against the colonists, the Whigs, both in England and America, denied its validity. When the address to the King, adopted by the House of Lords, praying that he would 'issue special commissions for enquiring of, hearing and determining' alleged offenses of the colonists of Massachusetts Bay, 'within the realm, pursuant to the provisions of the statute of the 35th year of King Henry the Eighth,' Hansard records that when the address and petition were sent to the Commons, 'the grand debate then commenced,' which he further says 'was very fine indeed.' After noting portions of the debate, he says:

'That part of the address which proposed the bringing of delinquents from the province of Massachusetts, to be tried at a tribunal in this kingdom for crimes supposed to be committed there, met with still greater opposition than the resolves. Such proceeding was said to be totally contrary to the spirit of our constitution. A man charged with a crime is by the law of England, usually tried in the county in which he is said to have committed the offense, that the circumstances of his crime may be more clearly examined and that the knowledge which the jurors thereby receive of his general character might assist them in pronouncing, with a greater degree of certainty, upon his innocence or guilt. That as the constitution, from a conviction of its utility, has secured this mode of trial to every subject in England, under what color of justice can he be deprived of it by going to America?' Concluding the account of the debate, it is said: 'The ministers (from whatever cause), were even unusually cold and languid in support of the resolution and the address, which they had proposed for executing the law of Henry VIII. and when they were asked, with a degree of insult, which of them would own himself the adviser of that measure, they severally declined to adopt it.' Parliamentary History, vol. XVI, pp. 479-494. Trevelyan says of the opposition:

"They commented forcibly on the cruelty and injustice of dragging an individual three thousand miles from his family, his friends, and his business, 'from assistance, countenance, comfort and counsel necessary to support a man under such trying circumstances', in order that, with the Atlantic between him and his own witnesses, he might be put to peril of his life before a panel of twelve Englishmen, in no true sense of the word his peers. Of those jurymen the accused colonist would not possess the personal knowledge which alone could enable him to avail himself of his right to challenge; while they, on their side, would infallibly regard themselves as brought together to vindicate the law against a criminal of whose guilt the responsible authorities were fully assured, but who would have been

dishonestly acquitted by a Boston jury. All this was said in the House of Commons, and listened to most unwillingly by the adherents of the ministry who after a while drowned argument by clamour. A large majority voted to establish what was for all intents and purposes, a new tribunal, to take cognizance of an act which, since it had been committed, had been made a crime by an *ex post facto* decree. Parliament had done this in a single evening, without hearing a tittle of evidence, and (after a not very advanced stage of the proceedings), without consenting to hear anything or anybody at all. But a House of Commons, which had so often dealt with Wilkes and the Middlesex electors, had got far beyond the point of caring to maintain a judicial temper over matters affecting the rights, the liberty, and now at last the lives of men.

"That which was the sport of a night at Westminster was something very different to those whom it most concerned at Boston. The chiefs of the popular party saw the full extent of their danger in a moment. \* \* \* To poor men, as most of them were, transportation to England, at best, meant ruin. Their one protection, the sympathy of their fellow-citizens, was now powerless to save them."

"Of the conditions prevailing in America, he makes this comment: 'The times were such that the lawyers in America, like all other men there, had to choose their party. In the Government camp were those favored persons whom the Crown regularly employed in court; and those who held or looked to hold, the posts of distinction and emolument with which the colonies abounded. For the bar in America, as in Ireland and Scotland to this day, was a public service, as well as a profession. But, with these exceptions, most lawyers were patriots; for the same reason that (as the loyal Governors complained) every patriot was, or thought himself, a lawyer. The rights and liberties of the province had long been the all-pervading topic of conversation in Massachusetts. \* \* \*

"The revival of the old Tudor statute, which kept a halter suspended over the neck of every public

man whom the people of Massachusetts followed and trusted, was a device as provocative, and in the end proved to be as foolish and as futile, as the operation which in the story of our great civil contest is called, not very accurately, the arrest of the five members.' *American Revolution*, Part 1, pp. 102-107.

Lecky thus refers to the effort to use the statute of Henry VIII against the colonists: 'By virtue of an obsolete law, passed in one of the darkest periods of English history, and at a time when England possessed not a single colony, any colonist who was designated by the Governor as a traitor, might be carried 3,000 miles from his home, from his witnesses, from the scene of his alleged crime, from all those who were acquainted with the general tenor of his life, to be tried by strangers of the very nation against whom he was supposed to have offended.' Vol. III. *Lecky, Eng., 18th Century*, 394-395."

In vol. II, *Correspondence of the Colonial Governors of Rhode Island*, pp. 416, 417, it appears that on the 26th of February, 1770, Robert Lloyd, the speaker of the Assembly of Maryland, transmitted to "the speaker of all the other houses of assembly on the continent" certain resolutions of the House of Delegates of Maryland, one of which, in part, was as follows:

"Resolution of the House of Delegates of Maryland. By the Lower House of Assembly of the Province of Maryland, November Session, 1769.

\* \* \* \* \*

"Resolved unanimously, that all trials for treason, misprision of treason or of any felony or crime whatsoever committed or done in this province, ought of right to be had and conducted in and before the courts of law held within this province, according to the fixed and known course of proceeding; and that the seizing any person, or persons, suspected of any crime whatsoever committed in this province and sending such person or persons to places beyond the sea to be tried is highly derogatory of the rights



of British subjects as thereby the inestimable privilege of being tried by a jury from the vicinage, as well as the liberty of summoning and procuring witnesses on such trial will be taken away from the party accused."

Many other evidences exist of the excitement produced in America by the suggestion that persons accused of treason here could be taken to England for trial. Much interesting information on this subject is contained in the opinion of the court in *People of California ex. Powell*, 87 Cal., 348; 11 L. R. A., 78, 79. In that case it was held that a section of the California code was void which provided for a change, without the consent of the defendant, of the venue of the prosecution for an offense from the county in which the crime was committed to another county, because it violated a provision of the State constitution which gave the accused the common-law right to have the jury selected from the county where the offense was supposed to have been committed. The opinion of the court in that case contains a very thorough discussion of the authorities and principles relating to the right of an accused person to be tried by a "jury of the vicinage." After referring to the English cases showing that that right was one which was always recognized, even in England, the court says:

"It is true that Parliament, as the supreme power of the realm, made some exceptions, which are enumerated by Mr. Chitty in his treatise on Criminal Law (vol. 1, p. 169), the chief of these being cases of supposed treason or misprision of treason examined before the privy council, and which under the statute of Henry VIII, might be tried in any county, and offenses of the like character committed out of the realm, and which by a statute of the same arbitrary reign were authorized to be tried in any county in England. But it is well known that the existence of such statutes with the threat to enforce them was one of the grievances which led to the separation of the American colonies from the British empire. If

they were forbidden by the unwritten constitution of England, they are certainly unauthorized by the written constitutions of the American States, in which the utmost pains have been taken to preserve all the securities of individual liberty."

It cannot be doubted that the efforts of Parliament to enforce this act of Henry VIII by transporting citizens of the colonies to England for trial for treason led to the insertion in the Declaration of Independence, among the "repeated injuries and usurpations" of the King, "having in direct object the establishment of an absolute tyranny over these States," the offense of "transporting us beyond seas to be tried for pretended offenses." And it was for the same reason, no doubt, that there was inserted in article III of the original Constitution the provision for the trial of crimes in the State where they shall have been committed.

It is well known that the Constitution was ratified by a sufficient number of the States to insure its adoption only because it was generally understood that it would be amended by adding to it a Bill of Rights. Notwithstanding the provision above quoted, the people of many of the States feared that the proposed Federal Government would do as the English Government had done—take them from their homes to be tried for alleged crimes in some distant place. Thus in the convention of the State of New York Mr. Tredwell said:

"Have we not neglected to secure to ourselves the weighty matters of judgment or justice, by empowering the General Government to establish one supreme, and as many inferior, courts as they please, whose proceedings they have a right to fix and regulate as they shall think fit, so that we are ignorant whether they shall be according to the common, civil, the Jewish, or Turkish law? What better provisions have we made for mercy, when a man, for ignorantly passing a counterfeit continental note, or bill of credit, *is liable to be dragged to a distant county, two*

*or three hundred miles from home, deprived of the support and assistance of friends, to be tried by a strange jury, ignorant of his character, ignorant of the character of the witnesses, unable to contradict any false testimony brought against him by their own knowledge of facts, and with whom the prisoner being unacquainted, he must be deprived totally of the benefit of his challenge? And besides all that, he may be exposed to lose his life, merely for want of property to carry his witnesses to such a distance."*

2 Elliott's Debates, 400.

Observe that it was not the fear of being taken to England for trial that oppressed the framers of the Constitution. That danger was ended when Great Britain recognized our independence. What especially concerned them was the danger of being carried to this District to be tried for offences supposed to have been committed elsewhere.

In the Virginia Convention (Vol. 3 Debates, p. 431), Mr. George Mason said he thought:

"There were few clauses in the Constitution so dangerous as that which gave Congress exclusive power of legislation within ten miles square. Implication, he observed, was capable of any extension, and would probably be extended to augment the Congressional powers. But here there was no need of implication. This clause gave them an unlimited authority in every possible case within that district. This ten miles square, says Mr. Mason, may set at defiance the laws of the surrounding States, and may, like the custom of the superstitious days of our ancestors, become the sanctuary of the blackest crimes. Here the Federal courts are to sit. \* \* \* It has been doubted whether jury trial be secured in civil cases. What sort of a jury shall we have within the ten miles square? *The immediate creatures of the Government.* What chance will poor men get when Congress have the power of legislating in all cases whatever, and where judges and juries may be under their influence and bound to support their operations?"

Mr. Mason again said, p. 528:

"Congress may make such a regulation, or may not. But suppose they do; what sort of a jury would they have in the ten miles square? I would rather, a thousand times, be tried by a court than by such a jury."

In North Carolina, Mr. LeNoir objected to the same clause. He said (vol. 4, p. 203):

"They have also an exclusive legislation in their ten miles square to which may be added their power over the militia. \* \* \* Should any one grumble at their acts, he would be deemed a traitor, and perhaps taken up and carried to the (place of) exclusive legislation and there tried without a jury."

Answering the latter objection, Mr. Spaight said (p. 209):

"But the gentleman \* \* \* says that any man who will complain of their oppressions or write against their usurpation may be deemed a traitor and tried as such in the ten miles square without a jury. What an astonishing misrepresentation! Why did not the gentleman look in the Constitution and see their powers? Treason is there defined. It says expressly that treason against the United States shall consist in levying war against them, or in adhering to their enemies, giving them aid and comfort. Complaining, therefore, or writing cannot be treason. (Here Mr. LeNoir rose and said he meant misprision of treason.) The same reason holds against that too. The liberty of the press being secured creates an additional security. Persons accused cannot be tried without a jury; for the same article provides that 'the trial of all crimes shall be by jury.' They cannot be carried to the ten miles square, for the same clause adds, and 'Such trial shall be held in the State wherein the said crime shall have been committed.'"

The fears referred to in these extracts from the debates in the conventions which ratified the Constitution resulted in

providing in the Sixth Amendment that the accused shall not only be tried in the State where the crime shall have been committed, but in the district of that State where the offense was committed, and by a jury of that State and district.

Notwithstanding the fact that all these precautions to preserve the right of trial in the vicinage of the alleged offense and by a jury of that vicinage grew out of the efforts of Parliament to take citizens of the Colonies to England for trial for treason, it is a remarkable fact that the cases relied upon by the Government of the United States in this case to authorize a prosecution in the District of Columbia for an offense which was committed in California, if it was committed at all, are based upon an English decision that a prosecution for a treasonable conspiracy lies wherever an overt act is alleged to have been committed by any of the alleged conspirators.

The case to which we refer is *King vs. Bowes and others*, which is not to be found in any of the reports except as it is referred to incidentally in *King vs. Brisac*, 4 East, 164, 171.

The latter case was decided in the King's Bench in 1803, fourteen years after the Government of the United States had begun its career under that Constitution the construction of which is now before the court.

In that case the indictment in eleven different counts charged that the defendants had entered into a conspiracy on the high seas to defraud the king by preparing and presenting for payment false vouchers for supplies pretended to be furnished to a vessel of his majesty's fleet—of which vessel the defendants were officers—and further charged (in each count apparently) that in pursuance of the conspiracy they concocted a false voucher accordingly and caused it to be presented for payment through an innocent agent in Middlesex county.

The court said that:

\* \* \* \* from analogy, there seems no reason why the crime of conspiracy, amounting only to a misdemeanor, may not be tried wherever one distinct overt act of conspiracy is in fact committed, *as well as the crime of high treason in compassing and imagining the king's death, or in conspiring to levy war.* In the *King vs. Bowes and others* the trial proceeded upon this principle; where no proof of actual conspiracy embracing all the several conspirators was attempted to be given in *Middlesex*, where the trial took place, and where the individual actings of some of the conspirators were wholly confined to other counties than *Middlesex*; but still the conspiracy as against all having been proved from the community of criminal purpose, and by their joint co-operation in forwarding the objects of it, in different places and counties, the locality required for the purpose of trial was holden to be satisfied by overt acts done by some of them in prosecution of the conspiracy in the county where the trial was had.

*"But upon this occasion it is not necessary to go at large into this point; for the eleventh and other counts in this information charge that the defendants fraudulently sent and delivered to the commissioners for victualling the navy a false and fraudulent bill of exchange, and a false and fraudulent account, with false and fraudulent certificates, and published the same as just and true vouchers that Scott had bought the quantities of provisions therein mentioned, and at the prices therein specified; whereas in fact he had not bought such quantities of provisions, nor any provisions at those prices; in order thereby to cheat and defraud the King in pursuance of a conspiracy between them to charge the King with more money than was due for any provisions bought or procured by the defendant Scott. That the delivery of such false vouchers, with such fraudulent intent, in pursuance of a conspiracy for that purpose, is an offense in the place where the vouchers were delivered, is a matter which cannot be doubted; though the conspiracy may have been in another place. And in the present case, the delivering the vouchers, and the presenting the bill of exchange to the commissioners of the victualling*

*office in Middlesex*, were the acts of both the defendants, done in the county of *Middlesex*. I say it was *their* acts, done by them *both*; for the persons who innocently delivered the vouchers were mere instruments in their hands for that purpose; the crime of presenting these vouchers was exclusively *their own*, as the crime of administering poison through the medium of a person ignorant of its quality would be crime of the person procuring it to be administered."

It will be observed that although the court in *Brisac's* case suggested the analogy between a prosecution for a treasonable conspiracy [in which the overt act is the real offense] and prosecutions for other conspiracies [in which the crime consists in the unlawful agreement], it distinctly declined to decide that the defendants in that case could be prosecuted for conspiracy in Middlesex County. The court actually decided only what is everywhere admitted at this day: That a criminal offense may be committed through the instrumentality of an innocent agent in the absence of the principal, who is the real criminal, and who may be tried where he so acted through his agent. Before that case, it seems, the accepted state of the law in England on this subject is shown only by the case of *Regina vs. Best*, 1 Salk. 174, which was decided in the year 1704, and in which it is said "the venue must be where the conspiracy was, not where the result of the conspiracy is put into execution."

And in 3 Chitty Criminal Law, page 1142, in the course of a discussion of the law on conspiracy, the author, referring to the case of *Regina vs. Best*, says:

"The venue must be laid in the county where the combination took place, and not where the object was carried into execution."

In *Regina vs. Bolton*, 12 Cox Cr. Ca., 87, a case tried in 1871 before Cockburn, C. J., in which there was an indictment for conspiracy against a number of defendants, two of whom (*Hurst* and *Fiske*) lived in Scotland, there was

evidence as to their relations in Scotland with another of the defendants—one Bolton. In addition, letters written by them from Scotland to Bolton in England were found in Bolton's lodgings in London when he was arrested. It was claimed by the prosecution that these letters were a further evidence of the alleged criminal relations between the parties.

In summing up to the jury, the chief justice, referring to the two Scotchmen, said:

"I am of opinion that they ought never to have been put upon their trial in this country at all.  
\* \* \* And again, in order to convict Hurst and Fiske, you must be satisfied that they were parties to a conspiracy in this country; for we have no jurisdiction as to what may have taken place in Scotland. If there was a conspiracy in Scotland to commit or incite to immorality in that country, the case should be tried in the courts of that country. It is oppressive to a man to try him at a distance from his place of residence and at a place where he may be unable to procure witnesses to attend, unless it is the place where he committed the offense. But here I am of opinion that any offense which may have been committed in Scotland by these parties, if any was committed, was committed in Scotland and not in this country, and it is there they ought to have been tried."

Nearly all the transactions between the numerous defendants in the above case occurred in England, and there was abundant ground for the prosecution to claim that although Hurst and Fiske were not in England when these transactions occurred, they were parties to a conspiracy, most of the overt acts of which were committed in England by some of the other conspirators. And yet we find no suggestion, either in the statement of the case or in the briefs of counsel or the opinion of the court that, for that reason, they could be tried in England. *Reg. vs. Brisac* is not mentioned.



There is therefore no authority even in England for the contention that persons accused of conspiracy may be tried for that offense wherever a prosecutor sees fit to charge that something was done by somebody to carry it into effect.

Besides, why should English cases on this question of American constitutional law be looked into at all?

Because the provisions of the Constitution under consideration were inserted as a protection against English statutes and English rules of law as to the place of trial of accused persons it is submitted that English decisions such as *Reg. vs. Brisac* are not authorities in the construction of these provisions. This argument cannot be better stated than in the words of Judge James in *Guiteau's case* (1 Mackey, 498, 539, 544. He said:

"We turn now to the peculiar and higher ground on which we conceive this question should stand, and to considerations to which, as a court of the United States, exercising the judicial power of the United States we are required to give especial attention. *However proper it may be that the courts of the States where the common law exists should treat the question of jurisdiction from the standpoint of that law, that question must be treated by the courts of the United States, wherever a fort or magazine or an arsenal or a district of country is under the exclusive jurisdiction of the national Government, from the standpoint of Federal authority and with reference to the relation of the crime to the sovereignty of the United States.*

"We take it to be a fundamental rule of construction, that an independent and sovereign government is always to be understood, when it makes laws for its own people, to speak without any reference to the law of another people or government; unless those laws themselves contain plain proof of a contrary intention; and that, when it thus appears that something is actually borrowed and embodied therein from the laws of another people, the extent of that adoption is to be strictly construed, and not enlarged by implication. So far as its laws can be under-

stood only by reference to foreign law, that reference is authorized by the law-maker, because it is necessary; but so far as its commands may be understood as original terms, and without such reference, they must be construed independently. It is only when understood to be, to this extent, the original expression of its own will that its words can communicate to its own people the whole and self-sufficient force of that will. To assume, without plain necessity, that it utters the intention of an alien law, is to ignore to just that extent its absolute independence of existence and action and will. \* \* \* There is yet one other consideration which we conceive to be important, namely, that the construction which we have given to this statute is consistent with the intent of the Sixth Amendment to the Constitution. That article provides that 'in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district *wherein the crime shall have been committed*.' The Constitution had already declared that: 'The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed;' but the protection of accused persons against the hardship of removal to a distant place of trial, and of increased difficulties of defense, was a matter of so much concern that a further limitation was added. *The important point is that, under both provisions, the place of trial and the tribunal were to be determined by the place where the crime was committed, and that this protection of accused persons was not to be defeated by any unnecessary theory as to where a crime must be deemed to be committed.*"

When this case was before this court in the removal proceedings (*Hyde vs. Shine*, 199 U. S., 62), Mr. Justice Brown, in delivering the opinion of the majority of the court, said that it was unnecessary to decide the question now under discussion, because the indictment charged that the conspiracy was entered into in the city of Washington, but remarked that there are many authorities to the effect that

"an indictment will lie within the jurisdiction where the overt act was committed." He refers in this connection to *King vs. Brisac*, which has been above considered, and to several other cases. In delivering the opinion of the Court of Appeals in the present case, Mr. Chief Justice Shepard, on this question of jurisdiction in conspiracy by the overt act, cites the same cases and several others. The cases so referred to either by this court or the court below will now be referred to.

*Cases Referred to by Mr. Justice Brown.*

*People vs. Mather*, 4 Wend., 229:

In that case the indictment was found and the trial had in Orleans County, New York. The original conspiracy was formed in another county, but while it was in process of being carried out, Mather joined it in Orleans County, and all the acts performed by him were performed there in association with others of the conspirators. *He was tried in the county in which he conspired.*

*Noyes vs. State*, 41 N. J. L., 418:

In that case it was held that a prosecution for conspiracy lies only in the State in which the conspiracy was formed; that the overt act alone does not give jurisdiction. The conviction in the case was sustained on the ground that Noyes and the agent of another conspirator had together performed in New Jersey the unlawful act which it was the object of the conspiracy to accomplish. *Noyes was tried in the State where he conspired.*

*Com. vs. Gillespie*, 7 S. & R., 469:

This case involved the same principles as *Noyes vs. State, supra*. The defendant was concerned with the agent of another alleged conspirator in selling lottery tickets in the State of Pennsylvania. *Gillespie was tried where he conspired.*

Com. *vs.* Corlies, 3 Brewster (Pa.), 575.

This is the decision of a single judge, holding a court of quarter sessions in Philadelphia. It seems to be in point.

In each of the foregoing cases, as in Brisac's case, the overt act involved was in itself a criminal offense without regard to the conspiracy which led up to it.

*Additional Cases Referred to by Mr. Chief Justice Shepard.*

Com. *vs.* Bartelson, 85 Pa. St., 482-489:

All that was decided in that case was that a conspiracy may be renewed from time to time by overt acts of the conspirators, so as to prevent the bar of the statutes of limitations. The case contains a dictum to the effect that the venue in conspiracy may be laid in any county in which an overt act has been committed by any one of the conspirators. The only cases cited in support of this dictum are *Rex vs. Brisac*, 4 East., 164, and *People vs. Mather*, 4 Wend., 230, neither of which cases, as above shown, is in point. The court in *Com. vs. Bartelson* did not have before it a case in which an overt act was performed by one of the conspirators in the absence from that jurisdiction of the other defendants.

*People vs. Arnold*, 46 Mich., 268-275:

In that case it appeared that the original conspiracy was formed in Calhoun County, Michigan, but that subsequently the conspirators went to St. Joseph County, in that State, in which latter county, pursuant to the conspiracy, they obtained money from a bank. All that that case decides, therefore, is that two or more conspirators may renew the original agreement by together doing something to carry it into effect, in which case the court where the renewal takes place has jurisdiction to try those who participated in such renewal.

*Bloomer vs. State*, 48 Md., 521:

The conspiracy in *Bloomer vs. State* originated in Maryland, where the case was tried. The question in the case was whether testimony as to overt acts of the defendants in another jurisdiction was competent, with other evidence, to establish the conspiracy in Maryland. *Bloomer was tried where he conspired.*

*People vs. Adams*, 3 Denio., 190-206:

This was not a case of conspiracy. The charge was obtaining money by false pretenses. The defendant, in Ohio, sent an innocent agent to New York, who there made the pretenses and for the defendant obtained money by means thereof. The court simply recognized a well-known application of the rule, "*Qui facit per alium facit per se.*"

*State vs. Grady*, 31 Conn., 118:

This was another case involving the same principle. Pursuant to a conspiracy formed in New York the defendants robbed an express car on a train passing through Connecticut. The defendants were on trial, not for the conspiracy, but for the robbery.

*Ex parte Rogers*, 10 Tex. Apps., 655:

In that case it was held that when a conspiracy to commit forgery was entered into in Texas and some overt acts in pursuance of the conspiracy were performed in Texas, the courts of that State had jurisdiction, although the actual fabrication was committed in another State by an agent or co-conspirator of the defendant on trial. *Rogers was tried where he conspired.*

*Insurance Co. vs. State*, 75 Miss., 24-34:

This was an indictment against the agents of certain insurance companies for entering into a conspiracy to fix the

insurance rates in Lauderdale county, Mississippi. The indictment did not state where the conspiracy was formed, and was objected to on that ground. The court overruled the objection on the ground apparently that all the defendants were concerned in the overt acts, all of which were committed in Lauderdale county. And the court expressly distinguishes that case from prosecutions in the Federal courts under section 5440, evidently being of opinion that if the indictment had been under section 5440 and the same state of facts had been presented the prosecution could not be sustained.

There are a few cases not cited by the court below, which will now be referred to.

In *Arnold vs. Weil*, 157 Fed. Rep., 429, 431, a case decided by District Judge Sanborn in November, 1907, Weil had been indicted for conspiracy to defraud the United States in obtaining coal lands from the Government. The original conspiracy was in Wisconsin, but overt acts had been committed in Colorado, where the indictment was found. Removal proceedings in Wisconsin resulted in an order of removal, whereupon the case came before Judge Sanborn upon a petition for *habeas corpus* and certiorari. After referring to prior cases he said:

"It is urged that this uniform course of decision as to the nature of a conspiracy, showing that the overt act is no part of it, but a distinct and independent act, indicates that such an act cannot make, or renew, or continue the conspiracy, but simply operates to make the offense subject to prosecution, cut off the *locus penitentiae*, and operate as evidence of the offense, and is a demonstration that the decisions referred to are not correctly decided. *This is a vexed question, and will in the end, I believe, be determined by the Supreme Court more with a view of promoting substantial justice under the sixth amendment, than from any consideration of logical or theoretical principles. Until it is settled by that court*

*these decisions should be followed, although such a rule may operate unjustly by compelling the removal of the accused to distant States for trial."*

It does not appear from the report of the above case whether or not Weil and those who were indicted with him had gone to Colorado to carry out their scheme. If they had done so the doctrine so reluctantly acquiesced in by the court has no application to this case.

*United States vs. Robinson*, 172 Fed. Rep., 107, was a case in the Circuit Court of Appeals for the Eighth Circuit, and was heard by Hook and Adams, circuit judges, and Carland, district judge—the latter delivering the opinion. The court says that a prosecution under section 5440 lies where any overt act is committed. It is clear, however, in that case that, after the defendants conspired in Ohio and in Illinois, they went to Minnesota to carry out their scheme, because this question arose under an instruction asked by counsel for the defendants, which assumed that the jury were to find "that that agreement and understanding was complete and existed between the defendants and the parties, *at the time they came within the district of Minnesota.*" Like several other cases which are sometimes cited as holding that the overt act alone gives jurisdiction, this case merely holds, in substance, that a conspiracy is a continuing offense, and that wherever two or more of the parties go and attempt to carry out their scheme the courts of that locality have jurisdiction as to them.

In *Ireland vs. Henkel*, 179 Fed. Rep., 993, Ireland and three others in a prosecution under section 5440, in a Federal court in Wyoming, were charged with conspiring to defraud the United States in illegally obtaining vacant coal lands of the United States. The indictment averred that the defendants conspired in Wyoming on June 1, 1906, and that the first overt act was performed on July 4, 1906, in the State of New York. It also charged the commission of overt acts in Wyoming. In removal proceedings before

a United States commissioner in New York the Government offered in evidence certified copies of the indictment and bench warrant and rested. Three of the accused proved that they had never been in Wyoming until after January 1, 1908, and the other proved that he had never been in Wyoming until June 10, 1906. The commissioner held that there was probable cause and committed the accused for removal. The case then came before Circuit Judge Lacombe on petition for *habeas corpus* and *certiorari*. Judge Lacombe sustained the petition and directed that the petitioners be discharged unless the Government should take an appeal, in which case he announced that proper directions would be made for the appearance of the accused. He held that the alleged conspiracy was consummated when the first overt act was performed, on June 4, 1906. He added:

"Moreover, it appears that none of the petitioners had ever corresponded, or been in communication, directly or indirectly, with any one in the State of Wyoming until after the period when the crime, if any, was consummated. This disposes of the suggestion made in *Price vs. Henkel*, 216 U. S. 493, and cases there cited. If there was any conspiracy in which these petitioners were engaged, that conspiracy was entered into in New York, and they should not be removed to Wyoming upon this record."

This case, it will be seen, is exactly in point. It is now pending on an appeal by the United States in the Circuit Court of Appeals for the Second Circuit.

In *Tinsley vs. Treat*, 205 U. S., 20, it appeared that Tinsley was indicted in a Federal court in Tennessee upon a charge in some of the counts of violating the Sherman anti-trust act and in other counts of violating section 5410 of the Revised Statutes. Removal proceedings were instituted against him in Virginia before a district judge of the United States. The Government presented a certified copy of the Tennessee indictment and rested. Tinsley offered to prove that he had been a resident of Virginia for many



years, and that he never, at any time or at any place in Tennessee at the times charged in the indictment, was a party to any of the things alleged in the indictment. He did not, let it be observed, offer to dispute the charge contained in the indictment that overt acts pursuant to the alleged conspiracy had been performed in Tennessee by other defendants. The district judge, assuming that he was governed by the practice in the State courts in Virginia, held that the indictment was conclusive. He accordingly refused to receive the offered evidence and held Tinsley for removal. The case came to this court on petition for *habeas corpus* and *certiorari*. It was here held that the indictment was not conclusive and that the district judge should have received and considered the evidence which he excluded. Mr. Chief Justice Fuller, in delivering the opinion of the court, after referring to the provisions of the Constitution relating to the right of accused persons to trial in the State and district wherein the crime shall have been committed, said:

"In order that any one accused shall not be deprived of this constitutional right, the judge applied to to remove him from his domicile to a district in another State must find that there is probable cause for believing him to have committed the alleged offense and in such other district."

It will be seen that there was involved in Tinsley's case the precise question whether the overt acts in Tennessee gave the Federal courts there the right to try one of the alleged conspirators who had not been in that State. While the court does not refer to that point, the fact that the judgment was reversed would indicate either that the point was not pressed by counsel for the Government or that the court did not approve its contention.

In *Price vs. U. S.* (216 U. S., 488) it appeared that Price had been twice indicted in the District of Columbia with others, charged with violating section 5440 by conspiring to

defraud the United States. He was arrested in New York. As he resisted removal proceedings, his case finally reached this court. One of his contentions was that, as he was in New York at the date on which the conspiracy was alleged in the indictments to have been formed and carried on and had never since that time been in this District, he could not have committed the offense charged in this jurisdiction.

The indictments charged the commission of several overt acts in this District. Thus, the precise question as to venue in conspiracy cases now before this court was again presented as it had been presented to it in *Hyde vs. Shine*, 199 U. S., 62, and in *Tinsley's* case just mentioned.

But in *Price's* case, as in the others, the court refrained from holding that the allegation of overt acts in this District was sufficient of itself to give jurisdiction here. Mr. Justice Lurton said:

"It [the evidence] does not exclude the possibility that the conspiracy may have been formed in the District of Columbia without appellant being physically present when the conspiracy was formed. *In re Palliser*, 136 U. S., 257, 265; *Burton vs. U. S.*, 202 U. S., 344, 387; *United States vs. Thayer*, 209 U. S., 39, 43."

(*Palliser's* case here cited involved the sending of an improper letter to a postmaster, and the offense was held to have been committed where the letter was received; *Burton's* case was the making of an unlawful contract through an agent; and *Thayer's* case held that the offense of sending a letter to an employee of the Government soliciting a political contribution was committed when the letter reached the addressee in a public office.)

The Attorney General in *Price's* case had contended in his brief that *Price* in New York might have communicated with the other defendants in Washington by letter or by telephone, and have entered into the conspiracy here in that way. The order of removal in that case was sustained on that ground,

and on that ground alone. That the court fails to refer even to the fact that the indictments charged the commission of several overt acts (by the other defendants) in this District is quite significant, because if the present contention of the Government is correct that fact alone would have required a decision in Price's case favorable to the Government. It was not denied in that case that the other defendants had committed in this District some of the overt acts charged in the indictment.

Upon this review of the authorities it will appear, we think, that neither in England nor in the courts in the United States, State or Federal (except, perhaps, the Court of Quarter Sessions in Philadelphia, in *Com. ex. Corliss, 3 Brewster* [Pa.]), has it yet been decided in a case where the question was squarely presented that a prosecution for conspiracy lies in any place where any one of the accused does any single act in pursuance of the unlawful agreement. The only other judicial opinions directly in point, which are not dicta merely, are those of the three dissenting justices in this court in *Hyde ex. Shine* in 199 U. S., and that of Judge Lacombe in Ireland *ex. Henkel, supra*.

There are some analogous cases, which may be well considered in this connection.

In *United States ex. Smith*, 173 Fed. Rep., 227, 232, the publishers of a newspaper were indicted in the District of Columbia for there publishing a libel. In removal proceedings in Indianapolis it appeared that the newspaper in which the alleged libel appeared was published in that city and that a number of copies containing the offensive article were deposited in the post office at Indianapolis by the defendants, addressed to various persons in this District. Anderson, District Judge, refused to order the removal of the defendants, solely on the ground that if there was any crime committed,

it was committed in Indiana and not in the District of Columbia. He further said:

"The discussion as to the hardship of taking a man away from his home to a distant place, to be tried, and the discussion *pro* and *con* as to the desirability of the District of Columbia and the city of Washington as a place for trial, was interesting. But those considerations, as suggested in one of the decisions of the Supreme Court, are not controlling, and I am not compelled to resort to anything of that kind to satisfy myself about what ought to be done here. To my mind that man has read the history of our institutions to little purpose who does not look with grave apprehension upon the possibility of the success of a proceeding such as this. If the history of liberty means anything, if constitutional guaranties are worth anything, this proceeding must fail.

"If the prosecuting officers have the authority to select the tribunal, if there be more than one tribunal to select from, if the Government has that power, and can drag citizens from distant States to the capital of the nation, there to be tried, then, as Judge Cooley says, this is a strange result of a revolution where one of the grievances complained of was the assertion of the right to send parties abroad for trial."

In *Burton vs. United States*, 196 U. S., 283, this court held that the circuit court in Missouri in which Burton was tried and convicted was without jurisdiction. It was charged that while he was a senator he had received certain payments as compensation for service in a fraud-order case before the Post-Office Department. The payments were made by checks on a St. Louis bank, sent by mail from St. Louis to him in Washington. These checks he deposited in Riggs Bank not merely for collection, but the bank passed to his credit the amounts of the respective checks as they were received. It was held that the payments were made at Washington, and that section 731 did not apply because there was no beginning of the offense in Missouri.

Burton was subsequently tried in the same court under

another indictment and convicted the second time. In the last case (*Burton vs. United States*, 202 U. S., 344) it was held that the court in Missouri had jurisdiction. In that case Burton was charged with *agreeing* to receive compensation for his services in the fraud-order case. It was held that because an offer which he made to his client to represent it on certain terms was submitted to the client at St. Louis, and by it accepted there, the contract was completed in St. Louis.

Suppose that instead of prosecuting Burton for violating a statute which makes it an offense for a Senator to agree to receive compensation for services in matters in which the United States is interested he and the other parties to the agreement had been prosecuted under section 5440, and that in that prosecution the same agreement had been set up as a conspiracy, can it be doubted that the Federal courts in Missouri alone would have had jurisdiction if nothing more appeared than that the agreement was made and that Burton in Washington rendered services in pursuance of it?

An act of Congress regulating interstate commerce made it a crime to obtain transportation for goods at less than the regular rates. Indictments were found in the northern district of Texas charging an agreement in violation of this act pursuant to which goods were transported from Cincinnati to Texas. Removal proceedings were instituted in Ohio, which resulted in bringing before the Circuit Court of Appeals for the Sixth Circuit the question whether the offense was complete when the arrangement for the rebate was made in Ohio. Circuit Judges Lurton, Day, and Severance heard the case. They directed the discharge of the accused on the ground that the offense was complete before the actual transportation of the goods was effected. Judge Day, delivering the opinion, after reaching the conclusion above stated, said:

"This construction is in harmony with the common law, wherein it was required that the jury should be from the vicinage, and with the constitutional requirement that trial shall be by jury and in the State

where the crime shall have been committed. True, this constitutional provision only undertakes to secure the right of trial where the crime has been committed, and, if the offense in this case has been committed in the remote district to which the goods were transported, then no constitutional right is infringed by requiring the offenders to be tried in such district. We think it entitled to weight, however, in construing this statute, that the interpretation here given provides for a trial at the scene where the criminal acts were committed, where the witnesses must necessarily live, where the accused can be tried without removal to great distances, and where good character may benefit the accused." *Savis v. U.S.*, 104 Fed. R. 136-146

So far this question has been argued on the theory that one of the alleged conspirators has gone into the jurisdiction of the prosecution and there committed overt acts. But by the refusal of the court to grant the instruction which is the subject of the third assignment of error the conspiracy was translated to this District by these acts, even if Dimond was not a party to the conspiracy. And by the refusal of the court to give the instruction referred to in the fourth assignment of error and the instruction which was actually given to the jury (818) in regard to the notice of appeal and other formal papers which Hyde "caused to be transmitted" to the General Land Office, the case was given to the jury on the theory that the conspiracy came to Washington in the mail pouches.

If these rulings are correct any person having business dealings with any officer or agent of the United States is subject to such a prosecution in this District, no matter where or how long ago he had such dealings. All claims against the United States are finally adjudicated in Washington or there is correspondence direct or indirect with some official in Washington in regard to them. There is not a case in the reports involving a charge of conspiracy to defraud the United States which, if the rulings referred to are correct, might not have been begun in the Supreme

Court of the District of Columbia. Whoever writes a letter to any official in Washington, or employs an attorney here, in connection with any claim against the United States, becomes liable to a prosecution here for conspiracy. And all those who are connected with him in the business or enterprise to which his letter or such employment of an attorney relates are in the same plight, whether they were consulted about the correspondence or the employment or not. Indeed, it is hard to conceive of any case in which financial or property dealings of the Government are involved, no matter where the transactions take place, that may not be the basis of a charge of conspiracy in this district if the rulings referred to shall stand. In every such case a receipt or some form of voucher ultimately comes to the accounting officers here in the ordinary course of business and according to the views of the learned judges below, the sending of such voucher to Washington may be considered an overt act here in some alleged conspiracy, and wherever the overt act is found there is the conspiracy also. And so by an absolute fiction—for it is nothing else—some of the greatest safeguards attempted to be thrown around persons accused of crime by the Constitution are cast aside.

It is a matter of great weight in considering as against both Hyde and Schneider the effect of the overt acts of Dimond or Benson in this District in conferring jurisdiction that both in the evidence and in the indictment itself Schneider is alleged to have been concerned in Hyde's business as an employee working for his monthly wages and not as one at all interested in the result of that business.

In *U. S. ex. Newton*, 52 Fed. Rep., 275, 286, in the District Court for the Southern District of Iowa, in 1892, there was a charge of conspiracy to defraud the United States in connection with obtaining compensation for transporting mails. It appeared that some of the employees of the principal defendant, Newton, were alleged to have rendered him

some aid in the carrying out of the conspiracy. In the charge to the jury in that case District Judge Woolson said:

"You will have observed in the trial of this cause that one of the theories upon which is based the claim of defendant's (Newton's) innocence is that defendant, Newton, was not acting in concert or agreement with any other person in whatever acts he did, as shown in the evidence; that is, that no agreement or combination with reference to such acts had been entered into between him and any other parties, and that they were not acting together in the matter with any common design or purpose to effect a common end. I have already with considerable detail stated the law applicable to this claim. I will now only add, *if you find from the evidence that the acts claimed by the Government to have been committed in the conspiracy charged were by the parties committing them performed simply as employees, servants, or agents of defendant, Newton, and were not performed by them as parties to or members or abettors of such conspiracy, then your verdict must be for the defendant.* But if any of the parties performing any of said acts performed the same with a common design, purpose and understanding on their part and that of defendant, Newton, as I have heretofore charged you, thereby to assist defendant, Newton, in carrying out any design of defrauding the Government, then they are no longer, as to such matters, in contemplation of law, his employees, servants, or agents, but thereby they become co-conspirators, and their acts become his acts, so far as they are performed in carrying out such common design or purpose; for it is an unvarying rule of law that the act of any conspirator, as well as the statement of any conspirator, in carrying forward or effecting the purpose of such conspiracy, becomes the act and statement of every co-conspirator, and the law charges every co-conspirator therewith, and holds him responsible therefor."

In his work on Criminal Law, section 1402, Wharton says:

"But it needs something more than a proof of mere passive cognizance of fraudulent or illegal action of



others to sustain conspiracy. There must be shown some sort of active participation by the parties charged. Of this we have an illustration in an English trial before Martin, B., where certain wharfingers and their servants were indicted for a conspiracy to defraud by false statements as to goods deposited with them and insured by the owners against fire. *It was held, that evidence that false statements were knowingly sent in by the servants, which would be for the benefit of the masters, and that afterwards the servants took fraudulent means to conceal the falsehood of the statements, with evidence that the employers had the means of knowing the falsehood and knew of the devices used to conceal it, was not sufficient to sustain the charge of a fraudulent conspiracy between the employers and servants.* There must be a concurrence in the common design. And we may also hold that mere sympathy with a conspiracy not exhibiting itself in overt acts does not make a person a co-conspirator."

In *O'Donnell vs. The People*, 110 Ill. App., 250, 285, in which case counsel who had taken part in a trial were charged with conspiring with their clients in a jury-fixing scheme, the court said:

"We are of opinion that the last sentence of the twenty-seventh instruction is clearly erroneous, because it, in effect, tells the jury that O'Donnell and Brady were liable as co-conspirators if, before the trial of the Union Traction case, they knew of the conspiracy in question, and, acting as attorneys of the Traction Company, permitted the case to go to trial, believing that any one of the jurors therein was secured in pursuance of such conspiracy. This instruction would allow the conviction of Brady and O'Donnell, if they knew of the conspiracy and permitted the Traction case to go to trial with the mere belief that one of the jurors was secured in pursuance of the conspiracy, without their having taken any part in the conspiracy themselves, and not even knowing that any particular juror was corrupt. In other words, a mere knowledge, with passivity on their part, would

be enough to convict them of conspiracy. Such is not the law. 2 Wharton's Crim. Law, sec. 1341*a*; *Evans vs. People*, 90 Ill., 384-90; *State vs. King*, 74 N. W. Rep. (Ia.), 691."

Thus even if it shall be held that where several have engaged in a conspiracy for their joint benefit, the act of any one of them, or the innocent agent of any one of them, in furtherance of the objects of the unlawful agreement anywhere carries the conspiracy to that place, it is difficult to see how that principle can apply to a mere employee or to his employer after the employee's limited connection with the matter has been terminated by his discharge from the service of his employer.

Let us consider this matter a little further. The act of February 9, 1903 (32 Stat., 806), provides:

"The provisions of section ten hundred and fourteen of the Revised Statutes, so far as applicable, shall apply throughout the United States for the arrest and removal therefrom to the Philippine Islands of any fugitive from justice charged with the commission of any crime or offense against the United States within the Philippine Islands, and shall apply within the Philippine Islands for the arrest and removal therefrom to the United States of any fugitive from justice charged with the commission of any crime or offense against the United States."

If the law as laid down by the trial court in this case on the subject of jurisdiction is correct, under the foregoing section, a citizen of the United States living in the Philippine Islands may be dragged here for trial for a conspiracy entered into, if at all, in those islands, because some one here, unknown to him and without his authority, has entered an appearance in some department case of which he never heard and in which he has no interest. By the same token, a resident of Washington may be transported "across seas"—not 3,000 miles, but over 10,000 miles—to the

Philippines for trial on the ground that some agreement to which he was a party here has become a crime there by some trivial act done there by a stranger to him. And this because by an English act of Parliament treason committed in an English colony might be punished in England, although the attempt to so prosecute our forefathers was one of the moving causes of the Revolution and was the principal cause of the constitutional provisions requiring prosecutions for crimes to be conducted where the offense is alleged to have been committed.

Finally, on this branch of the argument, it is submitted that even if the Supreme Court of the District of Columbia had jurisdiction of a prosecution for conspiracy to defraud the United States against Hyde and Schneider because of the commission in that District of the overt acts referred to in the indictment, the judgment should be reversed because the crime proved is not the crime charged. If it was intended by the Government to prosecute the defendants named in the indictment for a conspiracy that was entered into in California, the indictment should have informed them that that was what they were to meet. They could not legally be held for trial by the misleading charge that what they were to face was a conspiracy entered into in this District. For that reason if for no other the court should have granted the instruction directing the jury to acquit all the defendants.

Even in the case of *Rex vs. Brisac*, in 4 East., which is the foundation of all the dicta in subsequent cases as to overt act alone giving jurisdiction of prosecutions for conspiracy, the indictment truly set forth that the conspiracy was entered into on the high seas, and then the statement as to the overt acts in Middlesex County followed.

In the celebrated prosecution of Aaron Burr, in which he and others were charged with entering into a treasonable conspiracy, the indictment charged that Burr was present at a

meeting on Blennerhasset Island, in the Ohio River, which was held to forward the unlawful scheme in which he and his associates were engaged. It turned out that Burr was not at that meeting. The Government then claimed that since he was one of the conspirators and was in league with those who did meet at Blennerhasset Island, he was constructively present. Chief Justice Marshall thus dealt with that proposition (*U. S. ex. Burr*, 25 Fed. Cas. 1, 169-177):

"As to the first point, the indictment contains two counts, one of which charges that the prisoner, with a number of persons unknown, levied war on Blennerhasset's Island, in the county of Wood, in the district of Virginia; and the other adds the circumstance of their proceeding from that island down the river for the purpose of seizing New Orleans by force. In point of fact, the prisoner was not on Blennerhasset's Island, nor in the county of Wood, nor in the district of Virginia. In considering this point, the court is led first to inquire whether an indictment for levying war must specify an overt act, or would be sufficient if it merely charged the prisoner in general terms with having levied war, omitting the expression of place or circumstance. The place in which a crime was committed is essential to an indictment, were it only to show the jurisdiction of the court. It is, also, essential for the purpose of enabling the prisoner to make his defence. That at common law an indictment would have been defective which did not mention the place in which the crime was committed can scarcely be doubted. For this, it is sufficient to refer to Hawk. P. C., bk. 2, c. 25, § 84, and *Id.*, chapter 23, § 91. This necessity is rendered the stronger by the constitutional provision that the offender 'shall be tried in the State and district wherein the crime shall have been committed,' and by the act of Congress which requires that twelve petit jurors at least shall be summoned from the county where the offense was committed. A description of the particular manner in which the war was levied seems, also, essential to enable the accused to make his defence. The law does not ex-

pect a man to be prepared to defend every act of his life which may be suddenly and without notice alleged against him. In common justice, the particular fact with which he is charged ought to be stated, and stated in such a manner as to afford a reasonable certainty of the nature of the accusation and the circumstances which will be adduced against him."

\* \* \* \* \*

"If it be necessary to specify the charge in the indictment, it would seem to follow, irresistibly, that the charge must be proved as laid. All the authorities which require an overt act, require also that this overt act should be proved. The decision in Vaughan's case is particularly in point. Might it be otherwise, the charge of an overt act would be a mischief instead of an advantage to the accused. It would lead him from the true cause and nature of the accusation, instead of informing him respecting it. But it is contended on the part of the prosecution that, although the accused had never been with the party which assembled at Blennerhasset's Island, and was, at that time, at a great distance, and in a different State, he was yet legally present, and, therefore, may properly be charged in the indictment as being present in fact. It is, therefore, necessary to inquire whether in this case the doctrine of constructive presence can apply. It is conceived by the court to be possible that a person may be concerned in a treasonable conspiracy, and yet be legally as well as actually absent while some one act of the treason is perpetrated. If a rebellion should be so extensive as to spread through every State in the Union, it will scarcely be contended that every individual concerned in it is legally present at every overt act committed in the course of that rebellion. It would be a very violent presumption indeed, too violent to be made without clear authority, to presume that even the chief of the rebel army was legally present at every such overt act. If the main rebel army, with the chief at its head, should be prosecuting war at one extremity of our territory, say in New Hampshire; if this chief should be there captured and sent to the other extremity for the purpose of trial; if his

indictment, instead of alleging an overt act which was true in point of fact, should allege that he had assembled some small party which in truth he had not seen, and had levied war by engaging in a skirmish in Georgia at a time when, in reality, he was fighting a battle in New Hampshire; if such evidence would support such an indictment by the fiction that he was legally present, though really absent, all would ask to what purpose are those provisions in the Constitution, which direct the place of trial and ordain that the accused shall be informed of the nature and cause of the accusation?"

\* \* \* \* \*

In *U. S. vs. Cruikshank*, 92 U. S., 542, 558, in which an indictment for conspiracy to injure, oppress, threaten and intimidate certain colored citizens of the United States in the exercise and enjoyment of the rights, privileges, immunities and protection belonging to them as such citizens was held to be insufficient because of the generality of its averments, the court said:

*"The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone."*

In *Ball vs. U. S.*, 140 U. S., 118, it was held that an indictment for murder was fatally defective which did not state the *place* of death. As to that point, Chief Justice Fuller, speaking for the whole court, said (p. 136):

*"The accused is entitled to be informed of the nature and cause of the accusation against him, and jurisdiction should not be exercised when there is doubt as to the authority to exercise it. All the essential ingredients of the offense charged must be*

stated in the indictment, embracing with reasonable certainty the particulars of time and place, *that the accused may be enabled to prepare his defense and avail himself of his acquittal or conviction against any further prosecution for the same cause.* Hence, even though these defendants might have been properly tried in the eastern district of Texas, if the fatal stroke were inflicted there, though the death occurred elsewhere, yet, nevertheless, the averment of the place of death would still remain essential."

If these petitioners had been acquitted in this case and then had been indicted in a Federal court in California, charged with entering into the conspiracy there, of what avail would this record be to them? They would have been told that an acquittal of a charge of entering into a conspiracy in this District would not help them to meet a charge of conspiring in California.

This proposition is strikingly illustrated by the case of *United States vs. Marks*, 122 Fed., 964, in which the indictment charged a conspiracy to defraud the United States entered into in the District of Columbia *and* at Norfolk, in the southern district of Virginia. The prosecution was in the latter district. District Judge Waddill sustained a demurrer to the indictment on the ground, among others, that it could not be ascertained from it in which of the two jurisdictions it was proposed to charge the crime to have been committed. This would seem to have been a very reasonable and, indeed, necessary conclusion, for an indictment charging an offense to have been committed in the jurisdiction of the trial court and in another jurisdiction is unique.

But how much more objectionable is it to charge in the indictment that the crime was committed in the local jurisdiction and then seek at the trial to convict by proving it was committed in the foreign jurisdiction. Let us put the indictment and what took place at the trial on this subject side by side:

*The Indictment*: "\* \* \* at Washington aforesaid in the said District of Columbia unlawfully did conspire," etc.

*The Trial*: The COURT: "I do not understand that the Government claims that they were ever here and formed any conspiracy here; but I understand they rely upon the theory that any overt act performed here brought the conspiracy here \* \* \* they stand on that theory entirely. If that theory is wrong, of course they fall" (675).

It is difficult to imagine a case which more strongly than this shows the necessity of enforcing strictly the constitutional provision requiring that in all criminal prosecutions the accused shall enjoy the right to be informed of the nature and form of the accusation. If it had been stated in the indictment that the conspiracy relied upon was entered into in California and overt acts only committed in this District, this court, when the case was here more than six years ago, would have decided the question of jurisdiction discussed in this brief, and if it had then sustained the contention of Hyde's counsel on that subject a new prosecution could have been begun in a Federal court in California. All the enormous expense incurred by the United States in trying the case here, and all the difficulties to which the petitioners have been put in the way of making their defense so far from the scene of most of the transactions covered by the evidence in the case, would have been avoided.

And this suggests the question. Why was it that this prosecution was not begun in a Federal court in California? There would seem to be but one answer to that question: Hyde and Schneider were brought to Washington to be tried instead of being tried in California for the same reason that a British King and a British Parliament sought to take citizens of the colonies to England for trial for treason. In each case it was the knowledge and sympathy of the people who lived where the accused resided that was feared by the



prosecution. The record in this case shows throughout that it must have been generally known in California and in Oregon that the school lands in forest reservations were getting under the control of a few persons to be exchanged under the act of 1897, and that the authorities of those States were perfectly willing that their statutes, providing that the land should be taken up only by actual settlers for their own benefit, ~~were~~ <sup>should</sup> being evaded.

When it is remembered that if the contention of counsel for the Government in this regard shall be sustained by this court, practically every alleged attempt to defraud the Government, in which more than one person is claimed to have been concerned, may be brought to Washington and tried on a charge of conspiracy, and that in Crawford's case (212 U. S., 183), until this court interfered by the writ of *certiorari*, it had been established as the law of the District by the courts below that the employees of the Government could sit as jurors in a criminal case, notwithstanding the objection of the accused, it will be seen that the fears which were expressed in the State conventions which were asked to ratify the Constitution that citizens of the States might be dragged to the proposed Federal district of ten miles square and tried there by juries composed of "creatures of the Government," were not without foundation. It was to prevent just such a result that it was reiterated in the Sixth Amendment more distinctly than it was stated in the original Constitution that in criminal prosecutions the accused shall enjoy the right to a trial by an impartial jury of the State and district wherein the crime shall have been committed.

There may be some force in the suggestion that when the objects of a conspiracy are to be in part accomplished in a jurisdiction other than that in which the conspiracy was formed, and some acts have been committed in such other jurisdiction in pursuance of the conspiracy, those who take part in such overt acts should be brought to trial in the jurisdiction where such acts have been committed. But

if such a remedy is required, it is submitted that it should be brought about by the interposition of Congress and not by such a construction by the courts of the constitutional provisions, upon which these petitioners rely, as will very largely take away from every citizen of the United States the protection which the framers of the Constitution intended to throw around them. The Government of the United States was carried on for years without any statute whatever authorizing the punishment of a conspiracy to defraud the United States. It is not probable that any great harm will result from the fact that an overt act merely is not punishable as such. If it does result it is within the power of Congress to provide that he who performs any overt act in pursuance of a conspiracy to defraud the United States may be punished for such act in the district in which he commits that offense.

#### FIFTH, SIXTH, SEVENTH AND EIGHTH ASSIGNMENTS OF ERROR.

*Involving the question whether one who is charged with having been a party to a conspiracy and who relies upon the defense of the Statute of Limitations is entitled to the benefit of that statute if all that he did in relation to the alleged conspiracy was to render services as a servant of his master in consideration of a salary paid to him by his master and he has not, within three years before the finding of the indictment, participated in any way in the carrying out of the master's scheme, which is the subject of the alleged conspiracy; and involving the further question whether in such a case the employer also is entitled to the protection of the Statute of Limitations in so far as he is charged with conspiring with such employee.*

By section 1044 of the Revised Statutes, as amended by the act of April 13, 1876 (19 Stat., 32), it is provided:

"No person shall be prosecuted, tried or punished for any offense, not capital, except as provided in section one thousand and forty-six, unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed. But this act shall not have effect to authorize the prosecution, trial or punishment for any offense, barred by the provisions of existing laws."

Even in civil cases this court has frequently expressed its determination that statutes of limitation shall be strictly enforced.

"It has often been matter of regret in modern times, that in the construction of the Statute of Limitations, the decisions had not proceeded upon principles better adapted to carry into effect the real objects of the statute; that, instead of being viewed in an unfavorable light, as an unjust and discreditable defence, it had received such support as would have made it what it was intended to be, emphatically, a statute of repose. It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt from lapse of time, but to afford security against stale demands after the true state of the transaction may have been forgotten, or be incapable of explanation, by reason of the death or removal of witnesses. It has manifest tendency to produce speedy settlements of accounts, and to suppress those prejudices which may rise up at a distance of time, and baffle every honest effort to counteract or overcome them. Parol evidence may be offered of confessions (a species of evidence which, it has been often observed, it is hard to disprove, and easy to fabricate), applicable to such remote time, as may leave no means to trace the nature, extent, or origin of the claim, and thus open the way to the most oppressive charges."

*Bell vs. Morrison*, 1 Peters, 351, 360.

"Statutes of limitations are founded on sound policy. They are statutes of repose and should not be evaded by a forced construction."

*Pillow vs. Roberts*, 13 How., 472, 477.

"The Statute of Limitations is to be upheld and enforced not as resting only upon a presumption of payment from lapse of time, but according to its intent and object as a statute of repose. \* \* \* The Statute of Limitations was not enacted to protect persons from claims fictitious in their origin, but from ancient claims, whether well or ill founded, which may have been discharged but the evidence of discharge may be lost."

Shepherd *vs.* Thompson, 122 U. S., 231, 234, 236.

"Whatever prejudice there may have been in ancient times against statutes of limitations, it is a cardinal principle of modern law and of this court that they are to be treated as statutes of repose and are not to be construed so as to defeat their obvious intent to secure the prompt enforcement of claims during the lives of the witnesses and when their recollection may be presumed to be still unimpaired."

Campbell *vs.* Haverhill, 155 U. S., 610, 617.

"The theory of this remedial act is that upon which all statutes of limitations are based—a presumption that after a long lapse of time without assertion, a claim, whether for money or for an interest in land, is presumed to have been paid or released. This is a rule of convenience and policy, the result of a necessary regard to the peace and security of society."

Wilson *vs.* Iseminger, 185 U. S., 55, 60.

If this be the rule in civil cases, how much more important is it that a prosecution for crime shall not be delayed till the accused is rendered defenceless by the lapse of time?

The subject of the effect of an overt act in taking away the protection of the defense of the Statute of Limitations in prosecutions under section 5440 was recently very thoroughly discussed before this court in able briefs filed in U. S. *vs.* Kissel and Harned, 218 U. S., 601, 610, and in U. S. *vs.* Barber and Moon, 219 U. S., 72. The questions

involved were decided in the former case, the Barber case being governed by it.

The Kissel case was brought to this court by the United States to reverse a judgment of a circuit court sustaining pleas in bar to an indictment. In that case the indictment charged that the defendants, acting for the American Sugar Company, on December 30, 1903, and from that day to the day the indictment was presented, engaged in a conspiracy in restraint of trade by undertaking to keep out of business a certain rival corporation which was also engaged in refining sugar. It was held by this court in substance that such a charge averred a continuing conspiracy; that a conspiracy may have a continuance in time; and that where the indictment alleges that the conspiracy did so continue until the day of the filing of the indictment, "that allegation must be denied under the general issue and not by a special plea." Mr. Justice Holmes, who delivered the opinion, concluded by saying:

"Under the general issue all the defenses, including the defense that the conspiracy was ended by success, abandonment or otherwise, more than three years before July 1, 1906, would be open and unaffected by what we now decide."

The question arising out of these assignments of error is thus an open one in this court.

While it is not urged here that the statute runs from the commission of the first overt act if the conspirators afterwards go on with their scheme, it is well to bear in mind that in a number of well-considered cases it has been so held (*United States vs. Owens*, 32 Fed. Rep., 537; *United States vs. McCord*, 72 Fed. Rep., 159, and *United States vs. Biggs*, 157 Fed. Rep., 264).

In 1906, District Judge Quarles, in the Eastern District of Wisconsin (*Ex Parte Black*, 147 Fed., 832, 840), declined to permit the removal to Oregon of persons charged with conspiracy to defraud the United States because he

held they were protected by the Statute of Limitations. Reviewing the cases on the subject the court said:

"Third. It is apparent from the evidence that the cause of action set out in the indictment is barred by the statute of limitations. By section 1044, Rev. St. (U. S. Comp. St., 1901, p. 725), Congress has declared:

'No person shall be prosecuted, tried or punished for any offense \* \* \* unless the indictment is found \* \* \* within three years next after such offense shall have been committed.'

"Judge Bunn, in *United States vs. McCord* (D. C.), 72 Fed., 159, says:

"I have no doubt that the Statute of Limitations has stood in the way of this prosecution from the first, and that counsel for the Government have felt the difficulty.'

"This language seems to fit the case at bar, and to explain some eccentricities of the pleader. When was this offense committed, and when did the three years begin to run? The indictment avers that the conspiracy was formed in September, 1902, to bring about the fraudulent entry of certain lands therein described. The filing of the necessary affidavits on the 7th and 8th of October, 1902, must have set the statute running, because it was an open act on the part of the defendants to effect the purpose of the conspiracy. Therefore, according to the general precepts of the law, the action would be barred on the 8th day of October, 1905. The indictment in this case was found on the 3d day of April, 1906. To escape this dilemma the pleader has been driven to skillful fencing and adroit expedients.

"It is contended on the part of the Government that this was a so-called continuing crime. Conceding for the purposes of the argument that a conspiracy may, under certain circumstances, be recognized as a continuing crime; what fact or feature is there here to bring this case within such a classification? Here the conspiracy was confined to a single undertaking, limited to particular descriptions of land, and completed within six months. The entry-

men were handled like a drilled squad, and transported from place to place, taking the several necessary steps which culminated, on the 17th day of March, 1903. No effort was made to enlarge the original conspiracy to embrace any other lands, or adapt it to any further or different transaction. In the *Greene-Gaynor* case, *United States vs. Greene* (D. C.), 115 Fed., 349; *Greene vs. Henkel*, 183 U. S., 251; 22 Sup. Ct., 218; 46 L. Ed., 177, the conspiracy was formed in 1891. From year to year the old conspiracy was adapted to new contracts, whereby the Government was defrauded; and in 1897 it was revived as to certain new Government contracts. There might be some reason for treating that as a continuing offense, which was revived afresh with each new contract. But there is no well-reasoned case to which my attention has been called which justifies the doctrine that in every case of conspiracy the statute begins to run from the last overt act instead of the first. In cases of that nature the doctrine of *Commonwealth vs. Bartilson*, 85 Pa., 482, and *Insurance Company vs. State*, 75 Miss., 24; 22 South., 99, is the more sane and reasonable. If the illicit scheme is continued and new overt acts to carry it out occur within the period of limitation, the pleader should charge a new conspiracy, and the jury may be warranted from all the evidence in finding the existence of such new offense within that period. This appears to have been the course adopted in *United States vs. Greene* (D. C.), 115 Fed., 349. The indictment charged a conspiracy in 1891 and another in 1897, notwithstanding what is said in the opening about a continuing crime. Certain it is that on the 8th day of October, 1902, a definite overt act was performed, and on the 9th day of October, 1902, an indictment charging the conspiracy might have been found. Certainly the statute began to run at that date. What circumstance has intervened in this case to interrupt it? The law in such case has been well laid down by Judge Bunn of the western district of Wisconsin, in *United States vs. McCord*, *supra*:

"They (counsel for the Government) admit that

the indictments may properly have been found in March, 1891; that the conspiracy to defraud the Government was then formed by the defendants, and various acts performed intended to effectuate its objects. If this be so, it is difficult to see why the statute did not then begin to run. Otherwise, you would have a different period of limitation in conspiracies from what you have in other offenses against the Government, which could not have been the intention of the law. \* \* \* Counsel no doubt anticipated this difficulty and sought to avoid it by alleging an overt act committed on October 23, 1891, so as to avoid the claim of the running of the statute. Now to make good this contention, it is claimed that a conspiracy is a continuing offense. No doubt a conspiracy is a continuing offense in this sense: that whenever an individual comes into the conspiracy, however late, he is considered as adopting all the previous acts of his co-conspirators, and is liable in the same degree with them. But that it is a continuing offense in the sense that, as to the first and original parties to the conspiracy, this statute begins to run anew from the time of the commission of every overt act, is a contention that the court is unable to affirm.

"The same doctrine was announced in the district of Oregon in *United States vs. Owen* (D. C.), 32 Fed., 534, which was a case of the same nature as this, where the court says:

"But, admitting this is a continuous crime, the demurrer must be sustained on this point. That being the case, the prosecution of the defendants for any act committed three years before the finding of the indictment is barred by lapse of time, and those alleged to have been committed within three years of such finding are not sufficient to constitute the crime defined by the statute. The very foundation of the crime, the conspiracy, is shut out, and, without this circumstance, the offense in question is not charged in the indictment. However, this is an instantaneous crime, composed of the conspiracy, and the first act done to effect the object thereof at whatever distance of time therefrom. When the con-



spiracy is formed the crime is begun, and when the act is committed it is consummated. An indictment will then lie against the criminal, and the limitation on the right of the Government to prosecute him begins to run, and in three years the bar is complete.'

'This decision accurately defines the situation here. On the 3d day of April, 1906, when the indictment was found, the conspiracy alleged to have been formed on the 1st day of September, 1902, was barred, and we have a naked overt act, without any living active conspiracy to support it. It was said upon the argument that in certain cases not yet reported, the District Court of Oregon has adopted a different rule from that laid down in the Owen case. Such opinions were not brought to the attention of the court, and I doubt whether they overturn the reasoning of the Owen case.

"Ordinarily, a case like this under the statute of limitations would involve a conflict of evidence, in which case the prisoners should be removed so that the issue might be disposed of in the trial court. But as we have seen, the case at bar involves no conflict, and the court in the interest of the liberty of the citizen feels constrained to intervene and discharge the prisoners; and it is so ordered."

The action of Judge Quarles was sustained in January, 1908, by the Circuit Court of Appeals for the Seventh Circuit—before Baker, Seaman, and Kohlsatt, circuit judges, (160 Fed., 431)—on the ground, however, that at the time of the commission of the overt acts charged in that case the alleged conspirators "had then committed and completed every act, fraudulent or otherwise, to accomplish" the purposes of the alleged conspiracy.

In this case the question is not whether the statute runs from the first overt act, but it is in substance and effect whether it does not run from the last overt act; because, so far as Schneider is concerned, and as to the alleged conspiracy between Hyde and Schneider, the case was given to the jury upon the theory that although Schneider's active

participation in the alleged conspiracy may have terminated four, ten, or fifty years before the indictment was found, he would continue to be subject to prosecution as long as he lived, whenever Hyde or Dimond or Benson, in person or by an agent, should take any step in California or in the District of Columbia, or anywhere else, that might be construed by the prosecutor to be a step in carrying out the exchange of school lands in the forest reservations for other lands outside of such reservations. This appears from the instructions which form the subject of the fifth and sixth assignments of error. By the refusal of the court to grant the instruction which was set out in the eighth assignment of error, it was distinctly ruled that it was not necessary for the conviction of Schneider (and therefore not necessary for the conviction of any other defendant of conspiracy with him) that it should appear that he consciously and intentionally participated in the conspiracy within three years before the indictment was found. And by the instruction which is embodied in the seventh assignment of error it was ruled that a conspiracy between Hyde and Schneider might be proved by the acts of Dimond even after Schneider's statement to Holsinger had been communicated to the Commissioner of the General Land Office. The so-called confession is dated Nov. 12, 1902 (336). It reached the General Land Office Nov. 18 (341). Overt acts are charged in the indictment as of July 29, 1903 (36); March 15, 1903 (89); March 20, 1903 (90); March 25, 1903 (91), and Dec. 16, 1903 (94). The evidence as to all of them corresponded as to the dates.

It is submitted on behalf of these petitioners that the true rule on this subject is the one which was laid down by the Circuit Court of Appeals for the Eighth Circuit in 1907, in *Ware vs. U. S.*, 154 Fed. Rep., 577. That case was heard by Circuit Judges Sanborn and Hook and District Judge Phillips. In delivering the opinion of the court Judge Sanborn said (579):

"Where the conspiracy was formed, and an overt act was done in pursuance of it, more than three years prior to the indictment, and overt acts were subsequently done in the execution of it within the three years, may one of the conspirators be successfully prosecuted for it? The question is answered in the negative in *United States vs. Owen*, 32 Fed., 534; *United States vs. McCord*, 72 Fed., 159, 165, and in *Ex parte Black*, 147 Fed., 832-841. It is answered in the affirmative in *United States vs. Greene*, 115 Fed., 343, 347, 349, 350; *United States vs. Greene*, 146 Fed., 803, 889; *Lorenz vs. United States*, 24 App. Cas., Dist. of Columbia, 337, 387; *United States vs. Bradford*, 148 Fed., 413, 416, 419; *United States vs. Brace*, 149 Fed., 874, 876; *Commonwealth vs. Bartilson*, 87 Pa., 482-488; *People vs. Mather*, 4 Wend. (N. Y.), 259; 21 Am. Dec., 122; *Am. Fire Ins. Co. vs. State*, 75 Miss., 24, 35; 22 South., 99, 102, and *Ochs vs. People*, 25 Ill. App., 379, 414. After a careful reading and consideration of these and other authorities our conclusions are that the true answer to this question, is that the existence of the conspiracy and the conscious participation of the defendant therein within the three years are indispensable to the maintenance of such a prosecution, but that if these facts are established by competent evidence such a prosecution may be sustained. Proof of the formation by the defendant and others more than three years before the indictment, of such a conspiracy as that charged in the indictment under which an overt act has been done prior to the three years, is insufficient to sustain the charge of a conspiracy within the three years. But in connection with evidence *abundant* of the existence of the same conspiracy and of the defendant's conscious participation therein within the three years, it is competent evidence for the consideration of the jury in determining the issue presented by the indictment. *An overt act committed by one of the alleged conspirators within the three years, pursuant to a conspiracy between him and the defendant formed and followed by an overt act more than three years prior to the filing of the indictment, without the defendant's consent or agreement within the three*

*years to the continued existence and to the execution of the conspiracy, is incompetent to establish its existence and his participation therein within the three years."*

In the following cases substantially the same rule was adopted:

In *U. S. vs. Eccles*, 181 Fed. Rep., 906, which was decided in September, 1910, there was a demurrer to an indictment under section 5440, in overruling which the court (District Judge Bean) discusses the question of the application of the Statute of Limitations to prosecution under that section. The first count of the indictment in that case charged a conspiracy entered into in 1899 and continuing down to 1909. The second count charged a conspiracy entered into in March, 1907, and continuing down to October, 1909. In both counts several overt acts were charged. The court said:

*"The grand jury could legally have charged a conspiracy formed at some date within three years prior to the finding of the indictment, with subsequent overt acts, and proof that the conspiracy was formed and overt acts committed thereunder prior to that time, and that it continued down to and including the dates stated in the indictment, and the commission of the alleged overt acts, and the conscious participation of the defendants therein would have been competent evidence for the consideration of the jury in determining the issues presented by the indictment."*

In the noted case of *U. S. vs. Greene and Gaynor*, 115 Fed. Rep., 343, 350, in considering an objection made to an indictment under section 5440 to defraud the United States, the court said:

*"If, within the period of effective prosecution before the date of the indictment joint action was taken by the alleged conspirators or by two of them in pur-*

suance of the general scheme, *eo instanti* the tenacious grasp of the law seized upon the parties and the courts will proceed to lay bare from its inception every incident of the conspiracy."

At the trial of the case Judge Speer, in charging the jury (146 Fed., 803, 888), said:

"If the jury believe from the evidence that a corrupt scheme to defraud, such as is averred in the conspiracy counts of the indictments, had been in operation by and between the defendants for several years, *and that there was a new meeting of minds* between the said defendants to the indictments on or about January 1, 1897, looking to the fraudulent execution of the work under these 1896 contracts they might infer that there was a renewal of the conspiracy on or about January 1, 1897."

After the conviction of Greene and Gaynor in the above case the proceedings were reviewed by the Circuit Court of Appeals for the Fifth Circuit (154 Fed., 401). As to the Statute of Limitations, in the opinion of the majority of the court it was assumed that both of the defendants participated in the overt acts charged and proved, and it was therefore held that as those overt acts were within three years before the indictment was found the Statute of Limitations did not prevent the prosecution (411). The question was complicated in that court by the fact that it was claimed by the Government that the defendants had been fugitives from justice, so that the Statute of Limitations did not avail them. Pardee, circuit judge, dissented, holding that the conviction should have been set aside because some of the offenses charged were those for which the defendants were not extradited, and that as to another the prosecution was barred by the Statute of Limitations.

In *Ochs vs. The People*, 25 Ill. App., 379, several defendants who had been convicted of a charge of conspiracy relied

among other things upon the defense of the Statute of Limitations. As to that the court (p. 415) said:

"To warrant a conviction it was doubtless incumbent on the prosecution to prove the existence of a conspiracy and the defendants' connection with it at some time within the period of limitation. But to establish those facts it was proper to resort to any competent evidence having a tendency to prove them. In order to show that a conspiracy existed at any time subsequent to October 2, 1885, and that such conspiracy was composed of the plaintiffs in error and others, it was competent to trace the history of the conspiracy from its organization, and to show, either by the overt acts of its members or otherwise, how the conspiracy originated, what were its purposes and methods and who composed it. But having shown a conspiracy existing prior to the commencement of the period prescribed by the statute, *it was incumbent on the prosecution to prove that such conspiracy continued as an existing conspiracy and that the plaintiffs in error were members of it* subsequent to October 2, 1885. It being shown that a conspiracy was in existence, every overt act in furtherance of the objects of the conspiracy was, *at least as to the person acting*, a renewal of the conspiracy. To warrant a conviction, therefore, all that was necessary was to establish an existing conspiracy before and at the commencement of the period of limitation and overt acts in furtherance of the conspiracy afterward."

This case went to the Supreme Court of Illinois (124 Ill., 399), and that court on this subject (p. 426) said:

"The existence of the conspiracy prior to October 3, 1885, having been satisfactorily established, as we think it was, it is necessary for the avoidance of the bar of the statute to inquire whether there were any overt acts in furtherance of the conspiracy committed by the defendants subsequent to that time. We think the proof of the commission, *by all the defendants*, of such overt acts subsequent to October 3, 1885, is abundant. The evidence shows, satisfactorily, that

*Ochs and Wasserman were members of the conspiracy previous to October 3, 1885, and that they adhered to it afterwards, during the whole interval of time to December 6, 1885, by their cooperation, as members of the board, with their fellow conspirators, in the passing of these false and fraudulent bills."*

If, as indicated by these authorities, the law is that it is necessary for the Government, in a prosecution for conspiracy, to establish affirmatively that the persons on trial "consciously participated" in carrying out the alleged conspiracy within the period covered by the Statute of Limitations, then it is submitted that the judgment in this case should be set aside, not only as to Schneider, but as to Hyde. Manifestly, if Schneider was protected by the Statute of Limitations from prosecution for conspiring with Hyde, Hyde was protected from prosecution for conspiring during the same period with Schneider.

And if this rule be not the true one, and the law be as given to the jury by the trial court in this case, there is practically no Statute of Limitations in a prosecution for conspiracy.

In the present case there is an element not involved in any of the cases above referred to in which the Statute of Limitations was involved—that is, the fact charged in the indictment and established by all the evidence both for the Government and for the defendants, that Schneider's connection with this matter was merely that of an employee. Where that is the case, it is submitted that when it is shown that the relation of employer and employee has ceased, any presumption which might arise under other circumstances as to the continuance of the conspiracy does not obtain and affirmative evidence of such continuance is required to sustain the charge.

The authorities cited on page 56 of this brief as to the

effect of an overt act by an employer against his employee after the employee has left his service, are pertinent here.

Between 1897, when the lieu land act was passed, and February, 1904, when the indictment was found, Hyde had a number of clerks in his office, all of whom, it is believed, except one who was dead, were examined as witnesses in the case, all of them on behalf of the Government except one, who was called by the defendants (Slack, 186; Doyle, 199; Kincaid, 213; Curtiss, 249, for the Government; and Clarke, 702, for the defendants). It will be seen that it appeared from their own evidence that all these clerks had far more to do with the transactions in Hyde's office which are involved in this case than Schneider. Now, can it be possible that each one of these clerks, when this indictment was found, was liable, and is now liable, and will continue to be liable indefinitely in the future, to a prosecution for conspiracy with Hyde to defraud the United States whenever Hyde or anybody acting for him takes any step looking to a completion of any of the numerous lieu-land selection cases which the record shows were still pending unfinished in the General Land Office at Washington at the time of the trial of this case?

In the cases on this subject and in the opinion of the Court of Appeals in this case, as well as in the Government's brief in this case (which has just been received), it is constantly assumed that in considering this question of the application of the Statute of Limitations to prosecutions for conspiracies followed by overt acts, the courts are dealing with persons whose guilt is not in doubt. For instance, the learned Solicitor General suggests that one who has set a dynamite machine with a time fuse in position to blow up a building and goes away and leaves it to do its work in due course of time, is in the actual execution of that purpose all the time until the machine explodes. But suppose the question is whether the person charged with such a crime was guilty of placing the machine and lighting the fuse. In how many years after the fuse was lighted may any person be brought to trial



charged with having applied the match? The argument proves too much. Any trivial act committed by any person anywhere may be charged in an indictment to have been an overt act in the carrying out of an alleged conspiracy entered into at any length of time before the indictment was found. Thus, in urging the supposed injustice of allowing a conspirator to escape from the mere lapse of time while his confederates are carrying out the original agreement to which he was a party, counsel for the Government overlooks the danger to which an innocent man is subjected when, after many years, he is called upon to meet a charge of conspiracy growing out of some business transaction, the witnesses upon whom he relies being dead, the papers relating to the transaction being lost or destroyed, and his own recollection of the facts having been destroyed by the lapse of time. Such a construction of the Statute of Limitations is not that strict enforcement of it so often declared by this court to be the true rule even in civil causes.

It is conceded in the Government's brief that it will not help the Government's position here as to the Statute of Limitations to find in the record evidence that Schneider did consciously participate in Hyde's land transactions within three years prior to February, 1904, because the court told the jury they might convict him (and Hyde with him) whether he did so participate or not; but it is stated (on page 31 of the brief) that there is such evidence. No reference to the record is given in the brief to support this statement. There was no such evidence unless it may be gathered from some of the statements alleged to have been made by Schneider to Holsinger. Holsinger's report (336) gives no dates that bear on this question. Besides Schneider's statements to Holsinger are clearly inadmissible against anybody else. They were admitted only as against Schneider himself. The fact remains, therefore, that as against Hyde there is not one word of evidence in the record tending to prove that within three years before the indictment was found Schnei-

der participated in any way in any of the overt acts charged in the indictment, or participated in any way whatever in the alleged conspiracy. The court cannot, of course, be expected to read this record through to determine which of the counsel is in error as to this. It is presumed that in the oral argument the counsel for the Government will be prepared either to point out the evidence to which he refers or make the proper correction. In his brief, on page 31, he gives a reference to a number of pages of the record where evidence is found relating to Schneider's work in Hyde's office. As illustrating the point that all the evidence on this subject relates to transactions prior to the summer of 1899, the following statement is given as to the evidence so referred to, the numbers prefixed to each paragraph being the pages of the record given in the Government's brief, in their order.

208. Testimony of Marion L. Doyle, who was a stenographer in Hyde's office from 1899 to the latter part of 1901, who says that about a year after she went to Hyde's office, on a single occasion, Schneider was doing some work in the office for a couple of weeks, when he was assisting another clerk, Slack, in making maps of forest reserves.

215-16. Testimony of Miss Kincaid to the effect that for a time Schneider was "chief clerk" in Hyde's office, and would give her blanks to fill up. Miss Kincaid left Hyde's employ in November, 1897, (213) over six years before the finding of the indictment. [See her explanation of the phrase "chief clerk" on page 218.]

339. This is a reference to the Holsinger report in which it is stated that Schneider said that he furnished maps to certain government officials "as they were proposed by Mr. Hyde," and that Schneider said that he himself, for Hyde, drew the maps of the proposed Lassen Forest Reserve. There is nothing here by which dates can be fixed except the reference to the Lassen Forest Reserve, and as to that Allen, to whom the map was furnished, testified that it was enclosed in a report which he made to the General Land Office which

was dated March 6, 1899, but which should have been dated April 6, 1899 (305). The report itself will be found on page 281.

602-3. Here a witness who had been a clerk in Hyde's office, Walter K. Slack, identified the handwriting of Schneider on a map of the Cinnibar Springs Forest Reserve. That map was forwarded to the Commissioner of the General Land Office by Forest Superintendent Allen on the 14th day of December, 1898 (298).

747-8. This is Schneider's own testimony that he made the Lassen Peak Forest Reserve in March, 1899.

750, 751, 755, 762. These references are to Schneider's testimony as to the Lassen Peak Forest Reserve map, the date of which has already been referred to.

763-766. The reference here is to a number of papers on printed forms from the office of the General Land Office in Washington relating to the applications for forest reserve lieu-land selections with which Hyde's name was in some way associated. They all bear date in 1898. Schneider's connection with them was that in each of them certain blanks had been filled up in his handwriting.

It is also assumed on page 23 of the Government's brief that Dimond was the agent of Hyde *and* Schneider, and that he was receiving his instructions from both of them. It is confidently asserted that this is a great mistake. The bill of exceptions in this record contains the substance of all the evidence having any bearing upon any question of law raised at the trial (163). There is nothing in it which justifies the claim that Dimond was Schneider's agent or that he ever received any instructions from Schneider. The overt acts by Dimond set out in the indictment begin December 11, 1901, and end in March, 1903. Schneider was discharged by Hyde in December, 1901, and for over a year before he was discharged, according to the testimony of everybody who was in Hyde's office during that period, Schneider never came to the office at all except to settle his ranch accounts.

Walter K. Slack was a clerk in Hyde's office several different times, the last time being from June 10, 1899, until October 15, 1902 (597). He testified as follows (597):

"From the time I went there in 1899 until I left in October, 1902, so far as any clerical work in the office was concerned, Mr. Schneider did not do any after I got there. He did not do any work in the office only to settle his ranch accounts. He would come up there and settle his ranch accounts occasionally."

Miss Marion L. Doyle was Hyde's stenographer during the years 1899 and 1900, and until late in the year 1901. She testified that only on one occasion while she was there did Schneider have anything to do with the work in the office, and that was while he was engaged for a couple of weeks in tracing maps. She thought this was about a year after she was employed by Hyde (208).

Charles A. Johnson was an office boy for Hyde from the latter part of 1900 until January, 1902. He testified that Schneider used to come in and out of the office; that he might not be around for several weeks at a time, and that so far as he (Johnson) knew, Schneider did not have anything to do with the office business (220-224).

Another office boy of Hyde's, Lahl, who was employed by Hyde for about six months, during the year 1900, did not even know Schneider by sight and could not identify him in the court-room, although Schneider sat a few feet in front of him and facing him (225-226).

All these witnesses were called by the Government. The only other person employed in Hyde's office in 1900 or 1901, except a Miss Farwell, who died before the trial, was Herbert L. Clarke, who was called as a witness for the defendants. He went into Hyde's service as an office boy in 1898, and was promoted from time to time until he became clerk in charge in 1901. He testified that he did not think that Schneider had anything to do with the office business

or the land business in Hyde's office. The only time Clarke ever saw Schneider engaged in duties that related in any way to Hyde's land business was when Schneider helped him to carry the papers and furniture from one office to another, when Hyde moved his offices in 1898. The witness then proceeded:

"After that time [1898] I have seen him [Schneider] in the office and out of it. I cannot say how many times, but it was seldom. He spent most of his time on the ranches. When he came to the office he did nothing at all outside of the fact that he made his ranch reports to Miss Farwell; but I have never seen him doing anything else except in the early part of 1899, when he was tracing a map. Mr. Schneider continued to come to the office in this casual way until December, 1901. Up to the time that he left he had nothing to do with the affairs of the office, or any connection with Mr. Hyde except as I have stated."

Schneider's testimony was to the same effect (743-4). As to his relations with Dimond, Schneider testified that the only time he ever saw him while he (Schneider) was in Hyde's employ was in the summer of 1901, when Dimond with somebody else came down to one of Hyde's ranches to witness the dehorning of cattle (755).

Dimond himself testified that the only time he and Schneider met before Schneider was discharged by Hyde was "on one occasion, and that was in the spring of 1901, when I attended a round-up of cattle on Mr. Hyde's ranch" (776).

It is true that in the statements attributed to Schneider in the Holsinger report (336), Schneider is made to say that Dimond was sent to Washington (338); but there is nothing in the Holsinger report to indicate that Schneider said that he had anything to do with that matter. The context shows that it was Hyde and Benson who were referred to as sending Dimond on the errand in question. Holsinger did not write this paper till six days after his talk

with Schneider, and then wrote it almost entirely from memory, he having, at the time he saw Schneider, made only a brief memorandum of several names and "probably a few dates" (394, 395). The testimony of Holsinger, Burns, and Corbett as to Schneider's statements to them was admitted, of course, only as against Schneider. Nobody will contend that they were evidence against any of the other defendants. It cannot therefore be controverted that Hyde has been convicted of conspiracy with Schneider within three years before the indictment was found, when there was not a single word of evidence against him in the case tending in any degree to show that Schneider had had any connection with Hyde's land business within more than four years and a half before the indictment was found. And even as to the whole period between 1898 and the summer of 1899, Schneider is not shown by any evidence to have done anything in Hyde's land business except the purely clerical work of making maps and filling up blanks used in the routine of the office. His real offense, if he was culpable at all, was in what he did in Oregon in August of 1898.

It is respectfully submitted that all the assignments of error hereinabove set forth should be sustained, and that if any one of them be sustained, the case should be remanded to the Court of Appeals of the District, with instructions to that court to direct the Supreme Court of the District to vacate the judgment against both the petitioners, and to set aside the verdict against them and grant a new trial, at which new trial the trial court shall be governed by the opinion which this court shall deliver.

A. S. WORTHINGTON,

*Attorney for Petitioners.*



**IN THE  
SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1911.**

**No. 447.**

**FREDERICK A. HYDE AND JOOST H. SCHNEIDER,  
PETITIONERS,**

**vs.**

**THE UNITED STATES.**

**SUPPLEMENTAL BRIEF ON BEHALF OF THE  
PETITIONERS.**

**A. S. WORTHINGTON,**  
*Attorney for Petitioners.*



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**Additional Assignments of Error.**

The Court of Appeals of the District of Columbia further erred in sustaining the following rulings of the trial court:

IX.

Sustaining the demurrers filed by the District Attorney to the pleas in abatement of these petitioners, Hyde and Schneider (137-141).

X.

Giving to the jury in the final charge the following instruction:

"As to each defendant, you will remember it to be true that some evidence has been introduced against him that was not admitted as against the others. For this reason it is possible that there may be a verdict against one only of the defendants, although in fact he could not be guilty alone. You see that necessarily results, because each one is to be tried on the evidence which was admitted against him. As to most of the evidence, it was admitted as against all; but there was some evidence—for instance, the alleged confessions of Schneider—which was admitted as against him only. Now, if the evidence which was admitted as against Schneider was sufficient to satisfy you that he did conspire with the other defendants, or some of them, as the court shall charge you you may find, then you might convict him, although, when you came to take the evidence against other defendants, and to consider only what was admitted against them, you might not find sufficient evidence that had been admitted against them to convict them. The same would be true as to Dimond, as to whom a good deal of evidence was admitted that was not received as against the other defendants. And I think it is true of each of the defendants, that some evidence has been introduced as against that defendant only.

"So that it is true, as I stated in a proposition for the benefit of counsel, that there may be a verdict against any of the defendants, whether one or more, as to whom the evidence submitted, received against him or them, proves that he or they conspired as charged, provided any overt act is also proved as charged" (848-9).

## XI.

Permitting the District Attorney, on the direct examination of his own witnesses, William E. Valk, S. J. Holsinger, and Tillie A. Fleischauer, to refresh their recollection by exhibiting to them *ex parte* affidavits made out of court, and to ask each of said witnesses in substance whether certain statements contained in said affidavits were not true, and

permitting Arthur B. Pugh, of counsel for the Government, in his argument to the jury after the close of the evidence, to refer to said questions and answers as showing that the statements contained in the affidavits contradicting the evidence given at the trial in open court by the witnesses were true (364-5, 394-5, 552-7, 808-9).

## XII.

Refusing to permit the defendants to prove by their witness, C. M. Dalzell, chief clerk of the dead-letter office of the Post-Office Department, that certain envelopes which inclosed letters from the wife of the defendant Schneider, addressed to him in Mexico under the name of John P. Jones and deposited by her in the post-office at Tucson, Arizona, never reached the dead-letter office (799-800).

## XIII.

Giving to the jury in the final charge the following instruction:

"How were these titles in fact obtained? Did the applicants who did make application for them really apply for their own use and benefit alone; or were they applying for them because they were hired to do so by Hyde and Benson or either of them, either directly or through Schneider or anybody else? And when they made the application, did they have that understanding with the defendant Hyde or Benson, or their agents, that they should turn them over to them?

"If that was the situation, then the titles as to the applicants, and as to those who had notice of how they were acquired, were fraudulent as against the State's. The State had said: 'We will grant these lands only to those who apply for them for themselves, and not to anybody who applies for them, to turn them right over to somebody else, having an agreement with those other persons to turn them

over, so that they are merely acting as tools or figure-heads.' That was the State statute. The State said: 'We will not grant titles in that way; and if any one undertakes to get titles in that way they shall be invalid.' And if that is the way they were obtained, they were invalid" (850).

the court maintaining to the jury that this instruction should stand although the court was informed that it was objected to on the ground that any title so obtained could be assailed only by the State itself.

#### XIV.

Refusing to give to the jury at the close of the evidence the following instruction:

"10. Evidence has been introduced tending to show that certain of the applicants for school land had no personal knowledge of the character of the lands applied for, or that it was not adversely occupied. I instruct you that such want of personal knowledge in the applicant in any case did not make his application void and that although the information as to the character of the land and the non adverse occupancy was furnished by another, yet if the applicant believed it and the statements made were true in fact, the application was neither false or fraudulent" (806).

#### XV.

Giving to the jury, as matter of law, in the final charge, the following instruction:

"Now, I think, I am justified in advising you that written evidence, letters, for instance, written by parties at the time, are entitled to peculiar consideration as evidence.

"When a witness takes the stand and says that a man said so-and-so five or six years ago, he may be mistaken—he may not remember; but when you

have in black and white before you the words that were actually used, you are not in doubt any longer about what the words were" (851).

## XVI.

During the final charge to the jury, after referring to the question whether the defendant Dimond wrote certain anonymous letters in evidence, giving to the jury in that connection the following instruction:

"That has been treated in the argument as a very important question, and justly so. You cannot fail to see the importance of that question" (851).

## XVII.

Overruling the motion made by these petitioners after verdict and before sentence, for permission to take in open court the testimony under oath of the jurors or some of them, as to the matters referred to in paragraphs numbered 9 and 10 of their motion for a new trial (148, 150, 153, 154, 158), said paragraphs of said motion for a new trial being as follows:

"9. Because the long confinement of the jury during the trial and after the jury had retired to consider their verdict had the effect of coercing the jury to agree upon a verdict.

"10. Because of misconduct of the jury, among other things in this, that their verdict against this defendant was the result of an agreement made in the jury room after the jury had retired to consider their verdict between some of the jurors, whose judgment and opinion on the evidence was that all the defendants should be convicted, and others of the jurors, whose judgment and opinion on the evidence was that all the defendants should be acquitted, and which agreement was in substance that if those of the jurors who were in favor of convicting the defendant Benson would join in a verdict of acquittal

as to him, those who were in favor of acquitting the defendant Hyde would join in a verdict of conviction as to him; and that if those of the jurors whose opinion on the evidence was that all the defendants should be convicted would vote for the acquittal of the defendant Dimond, those who were in favor of acquitting all the defendants would vote for the conviction of the defendant Schneider" (148).

## **ARGUMENT.**

### **The Ninth Assignment of Error.**

#### *As to the Plea in Abatement.*

The following sections of the District Code govern the organization of the grand jury:

"SEC. 198. JURORS.—The clerk of the Supreme Court of the District of Columbia, the United States marshal, and the collector of taxes for said District are hereby constituted a commission to from time to time make the list of jurors for service in said court and fix the number of jurors to be listed therefor.

"SEC. 200. JURY BOX.—The names shall be written on separate and similar pieces of paper, which shall be so folded or rolled up that the names cannot be seen, and placed in a box to be provided for the purpose.

"SEC. 201. The box shall be sealed and, after being thoroughly shaken, shall be delivered to the clerk of the Supreme Court for safe-keeping."

According to the averments of the plea in abatement in this case (137), the jury commissioners not only did not themselves select the names of all the persons to go in the box, but they turned over the whole business of filling the box to one James A. Hartsock, and he alone—none of the commissioners being present—filled the box with such names as he chose to put into it. From the box so filled

the grand jury which found this indictment was drawn.

The plea in abatement, after setting forth in detail the circumstances which show that the foregoing summary is correct, avers that the grand jury which returned this indictment "was not a legal body, and that it had no power to return a legal indictment against this defendant."

As the undersigned recollects the circumstances the court below sustained the demurrer to this plea on the ground that it was not filed in due time, applying the decision of this court in *Agnew vs. U. S.*, 165 U. S., 36, which came here from the Circuit Court for the Southern District of Florida. But that case has no application, because, first, the objection there was not that there was no grand jury at all, but merely that the court below had improperly filled four vacancies in that body; second, because under the rules of practice and pleading in force in this jurisdiction a defendant in a criminal case has the absolute right to file a plea in abatement after a demurrer to the indictment has been overruled; and, third, the objection that a plea is filed too late must be raised by motion to strike out and not by demurrer.

The rules of the Supreme Court of the District of Columbia in force when the indictment in this case was found, and in force ever since, provide that, in common-law cases, the order of pleading shall be:

- "1. To the jurisdiction.
- "2. To the disability of the plaintiff—abatement.
- "3. To the disability of the defendant—abatement.
- "4. To the declaration.
- "5. In bar."

Rule 19 of rules published in 1894.

Rule 28 of rules published in 1909.

The rules of 1894 further provide (Rule 111) that—

"The common-law rules shall apply to and govern the practice in the criminal courts so far as applicable."

The rules of 1909 contain substantially the same provision (Rule 70).

In Bishop on Criminal Procedure, vol. I, 746, the order of pleading is stated as follows:

"ORDER OF PLEAS. In civil cases, at the common law, there is an established order for the pleas; so that, when a plea has been overruled, the party may bring forward any one below it, but none above it, in the order. In criminal, the rules as to this are fewer, and in a degree different. In a general way, yet not as conclusively binding throughout, we may accept, for the latter, Chitty's 'outline of these matters, in the order in which they naturally arise,' as follows:

"1. Pleas to the jurisdiction.

"2. *Demurrers*.

"3. Dilatory pleas.

"1. Declinatory of trial.

"2. *In abatement*.

"4. Pleas in bar of the indictment.

"1. Autrefois acquit.

"2. Autrefois attain.

"3. Autrefois convict.

"4. Convict of another felony, and had his clergy.

"5. Matter of record, pardons, &c.

"5. Pleas to the matter of the indictment.

"1. Not guilty.

"2. Special pleas."

In the case of *Deane vs. Echols*, 2 App. D. C., 522—a civil case—after a demurrer to the declaration had been overruled the defendant filed a plea in abatement in which he averred that the plaintiff was a married woman. The trial court ruled that the plea came too late—that it should have been filed before the demurrer. The defendant electing to stand on this plea, judgment went against him. But the Court of Appeals held that under the practice in this District the defendant had a right to file his plea in abatement when he filed it, and accordingly reversed the judgment. In concluding the opinion on this subject, Mr. Justice Morris said:



"But when the court has given a general leave to plead over within a certain specified time, and such leave to implead involves no idea of negotiation or imparlance with one's opponent, it is not apparent why a party should be precluded from interposing a plea in abatement as a defense to the action. We are not advised that there has been any practice to that effect in the District of Columbia; indeed, so far as we have been advised, the practice has been directly the reverse, and to the effect that pleas in abatement may be filed after a demurrer has been overruled. In this we see nothing unreasonable, and nothing that tends unduly or improperly to delay the administration of justice. If a defendant chooses to rest his case upon a plea in abatement and issue is joined with him upon it, there can be no good ground on either side to complain of delay. A judgment may be thereby more speedily reached than by the general issue."

Besides, a moment's reflection will show that the question whether any pleading has been seasonably filed cannot be raised by demurring to it. The only question involved in the hearing of a demurrer is whether it makes averments which, if true, entitle the pleader to judgment in his favor. True, upon the hearing of a demurrer the court goes back to the first fault, but it is the first fault in the statement of the case and has nothing to do with the time of filing the several pleadings involved.

In the present case a demurrer to the indictment, signed by counsel only, was overruled, a special appeal to the Court of Appeals was allowed and the mandate of that court sustaining the lower court was filed in the Supreme Court of the District April 27, 1906 (100).

Motions to require the Government to elect and to file a bill of particulars were filed by the defendants Hyde and Benson in July, 1906 (101, 108). The motions to elect were overruled, but the Government was required on July 24, 1906, to file a bill of particulars. A bill of particulars was

accordingly filed and by leave of the court amended from time to time, the last amendment being filed on March 20, 1908 (136).

On April 1, 1908, Hyde and Schneider *for the first time* appeared in court for arraignment, and they thereupon at once filed the pleas in abatement now under consideration (137, 138). And as these pleas were seasonably filed under the rules of the court to which they had been brought for trial, and as no motion was made to strike them out as having been filed unseasonably, they had a right to have the judgment of the court on their sufficiency. And that involves the question now to be discussed, whether a grand jury drawn from a box filled by a person who has not a shadow of authority to do so is a valid body or can find a valid indictment.

In Thompson and Merriman on Juries, section 555, the authors say:

"It is not a sufficient ground for a challenge to the array that the jury list was prepared by *de facto* commissioners only. *However, it is clear that a duty of such importance and gravity cannot be relegated to a deputy by the officer charged therewith. An irregularity of this kind is regarded as something more than an immaterial departure from the manner of doing acts specified by law. It is held that this irregularity is not cured by the statutory officer examining the work of his deputy and approving the result.*"

In *United States vs. Gale*, 109 U. S., 65, it was held that objections to the organization of the grand jury cannot be made in general *after a plea in bar*. The objection in that case was that four persons had been excluded from the grand-jury panel because they had voluntarily taken part in the Rebellion. This objection was first taken after trial and conviction by a motion in arrest of judgment. In delivering the opinion of the court Mr. Justice Bradley said the objection should have been made by motion to quash or by plea in abatement. He adds:

"This, we think, is the true doctrine in cases where the objection does not go to the subversion of all the proceedings taken in empanelling and swearing the grand jury; but relates only to the qualification or disqualification of certain persons sworn upon the jury or excluded therefrom, or to mere irregularities in constituting the panel. We have no inexorable statute making the whole proceedings void for any such irregularities." \* \* \*

"There are cases, undoubtedly, which admit of a different consideration, and in which the objection to the grand jury *may be taken at any time*. These are where the whole proceeding of forming the panel is void; as where the jury is not a jury of the court or term in which the indictment is found; *or has been selected by persons having no authority whatever to select them*; or where they have not been sworn; or where some other fundamental requisite has not been complied with."

In *Rodriguez vs. U. S.*, 198 U. S., 156, an objection had been made to a grand jury on the ground that one of the jury commissioners had acted by deputy. The court declined to express any opinion on this point, because no exception had been taken to the ruling of the court below on the subject. But in delivering the opinion Mr. Justice Harlan said:

"The Government, however, contends that the motion in arrest of judgment came too late, and in support of that view cites the following language from *United States vs. Gale*, 109 U. S., 65, 69: 'Much more would it seem to be requisite that all ordinary objections based upon the disqualification of particular jurors, or upon informalities in summoning or impaneling the jury, where no statute makes proceedings utterly void, should be taken *in limine*, either by challenge, by motion to quash, or by plea in abatement. Neglecting to do this, the defendant should be deemed to have waived the irregularity.' Wharton Cr. Pl. and Prac., §§ 344, 350, 426. But in the same case the court said what is pertinent to the present

discussion: "There are cases, undoubtedly, which admit of a different consideration, and in which the objection to the grand jury may be taken at any time. These are where the whole proceeding of forming the panel is void; as where the jury is not a jury of the court or term in which the indictment is found; *or has been selected by persons having no authority whatever to select them*; or where they have not been sworn; or where some other fundamental requisite has not been complied with."

A Kentucky statute required certain jury commissioners to select the jurors and to place the names of those so selected in a revolving drum or wheel. At the beginning of a criminal trial the defendants moved the court to discharge the panel of petit jurors, because the commissioners, after agreeing on the list, had allowed two clerks of the court to put the names in the wheel. The motion was overruled and the defendants were convicted. For this cause the Court of Appeals of Kentucky reversed the judgment. In doing so, the court said:

"In answer to the argument made for appellants, it is said for appellee that the record does not show that the substantial rights of appellants were prejudiced by the action of the court in overruling the challenge to the array; and it is further suggested that it was entirely proper that the judge should advise the jury commissioners and the clerks that they had the right to claim the privilege of not testifying, as, if they gave evidence sustaining the avowals made, they would subject themselves to punishment for contempt, and no person can be required to give testimony against himself. The record does not disclose that the members of the panel from which the jurors were selected to try the case were in any respect objectionable, and in this particular the substantial rights of appellants were not prejudiced by the rulings of the trial court; but, in a matter that strikes at the very foundation of our system of selecting jurors, we do not deem it material or necessary that any prejudicial error shall

be made to appear, other than a substantial one committed in failing to select the juries in the manner pointed out in the statute. It is probable that the jurors selected to and that did try this particular case were men who possessed all the statutory qualifications; and it may also be conceded that they were entirely acceptable to counsel and parties on both sides. But back of this is the more important question that litigants have the unqualified right to demand that juries shall be selected in the manner prescribed in the statute, and in passing on this right the individual qualification of the juror or the fact that he may be entirely acceptable to the parties is not to be considered. If the contention of appellee was sound, the careful and elaborate scheme devised for selecting juries would be nullified, the statute would be a dead letter, and no inquiry could be made into the manner in which jurors were originally chosen, if those selected to try the particular case possessed the statutory qualifications and were personally satisfactory. The legislature, in obedience to a popular demand that a radical change be made in the manner of selecting juries, after long delay and much discussion, enacted the statute now in force; and this court in more than one case has given to this law the sanction of its approval and declared that its efficiency shall not be impaired or destroyed by the failure of public officers to observe its requirements.

\* \* \* \* \*

"If the methods avowed to have been adopted in this case by the commissioners are upheld, all the safeguards thrown around the selection of juries will be virtually abolished, and the efforts of the legislative department to improve and elevate the jury system a failure. The juries are almost entirely composed of men selected by the commissioners, and this power confided to them cannot be delegated in whole or in part to others. No minor officers connected with the administration of justice have more important duties to perform than do the jury commissioners. Upon their judgment and discretion in the selection of intelligent, sober, discreet, and impartial citizens

and housekeepers of the county depends in a large measure the pure and impartial administration of justice in the conduct of jury trials, and this valuable privilege ought not and will not be frittered away merely because delay or inconvenience to the court or litigants may result from sustaining a challenge to the array because of substantial irregularity in the selection of the juries. It is infinitely better that there should be some delay in the trial of cases or inconvenience suffered by individuals than that a statute intended to safeguard the rights of all litigants should be totally disregarded. If the mistake or irregularity was a minor one, we would not regard it as material; but, if the avowals made are true, the statute was violated in several substantial particulars. The provisions disregarded are not directory, but mandatory. They constitute the very substance and life of the law, and may not lightly be ignored or disobeyed. No fraud or improper purpose can be imputed to these commissioners, nor is it necessary that it should be. Doubtless they acted in good faith, but nevertheless in open disobedience of the law under which they were selected, and their conduct can neither be overlooked nor approved."

Railroad Company *vs.* Schwab, 127 Ky., 87.

In *Dutell vs. State*, 4 Greene (Iowa), 125, a case in which the indictment was quashed because the grand jury were not selected by the proper officers—one of them having acted by a deputy, which the statute forbade—it was argued on behalf of the State that the defendant could not raise the objection after indictment; that he should have challenged the array. To this the court replied:

"This course may be adopted with propriety by a 'defendant held to answer for a public offense,' but can it be expected that citizens at large, against whom there is no imputation of offense, are required to appear and challenge the panel of grand jurors, or be forever precluded from raising an objection to their selection or authority to act?"

The Iowa code provided that grand jurors should be selected in a manner prescribed, and by officers named. It also authorized the setting aside of an indictment found by a grand jury not impaneled as prescribed by law. The code further provided that the Supreme Court hearing cases on appeal should render judgment in all cases without regard to technical errors or defects which did not affect the substantial rights of the parties. In this state of the law, a deputy sheriff took part in the preparation of the list. The code required the sheriff himself to do this. On this account the Supreme Court held that a motion to set aside an indictment found by the grand jury should have been sustained. It said:

"The defect here appearing is not a mere technical one, not affecting the substantial rights of the defendant. It is not a mere irregularity, but *the objection goes to the jurisdiction of the officers to do the act.* The deputy sheriff had no more authority to act in the premises than any private individual, and the duty, being one to be performed by two officers, cannot be performed by one only, nor by one authorized officer and a private person or unauthorized officer.

"The comparing of the ballots with the lists is an important and material act. This duty is required so that mistakes shall not occur in writing the ballots by writing names thereon that are not contained on the lists. It is required in order that the same persons, and none other, shall be drawn who have been returned as jurors by the judges of election. This is the method adopted by the law for the purpose of selecting grand jurors from the body of the county, good and true, for the purpose of inquiring into offenses committed or triable within the county. It is not only essential that these acts be performed, but it is also essential that they be done by the officers appointed by the law to perform them. If the trial of the cause should be had before some person not authorized to act as judge, a conviction, although obtained in strict accord with all the forms

and rules of the law in every other respect, would be void. *Michales vs. Hine*, 3 G. Greene, 470; *Winchester vs. Ayres*, 4 *Id.*, 104; *Smith vs. Frisbie*, 7 Iowa, 486; *Petty vs. Dural*, 4 G. Greene, 120; *Wright vs. Boon*, 2 *Id.*, 458; *Smith vs. Grimwood*, June term, 1859, unreported, Ham. Digest, 532; and it would not do to say that there was no prejudice to the substantial rights of the defendant, where thus tried and convicted by an unauthorized tribunal. So, in this case, *the defendant is prejudiced in his substantial rights in that the duty of comparing the ballots with the lists of grand jurors, and correcting the same, was not performed by the persons who alone under the law are empowered to discharge that duty.* The abstract in this case shows that various corrections in the lists were made by the auditor and deputy sheriff.

"The defendant is entitled to be indicted and tried in substantial compliance with the law, and by the officers appointed by the law, and when he has been indicted or tried by others than those selected by law he is prejudiced in his substantial rights. So, too, if any material step in the proceedings be performed by a person having no authority to do so. The language of the statute is that when 'the grand jury have not been selected, drawn, summoned, impaneled or sworn as prescribed by the law,' 'a motion to set aside the indictment' may be made and 'must be sustained.' Where the duties prescribed are performed by the officers or persons authorized and appointed by the law, immaterial departures from the *manner* of doing acts specified, which do not prejudice the substantial rights of a defendant accused of a public offense, will not afford grounds for setting aside an indictment, the statute being in this respect directory. *State vs. Carney, supra.* But when the acts required by law to be performed by certain officers are not so done by them, but by unauthorized persons, it is as if not done at all; it is of the essence of the act that it be performed by the officers or persons designated by law."

*State vs. Brandt*, 41 Iowa, 593, 603.



In Mississippi the law required the jury list of each county to be prepared by the assessors of taxes for that county. In a criminal case it was averred by a plea in abatement that the list was prepared by one who acted as the assessor's agent or deputy. At a trial of the issue joined on this plea, it appeared that after the list was prepared the assessor had approved it. In the lower court the issue was determined against the defendants, and they were tried and convicted. On appeal the judgment was reversed, solely on the ground that the plea should have been sustained. The court said:

"The statute, Hutch. Dig., 886, contains specific directions as to the mode of constituting the grand jury. They are to be selected by lot, from the householders and freeholders of the county, a list of whose names has been made out and returned, in the manner prescribed, by the assessor of taxes. Upon the authority of the cases above cited, it is not sufficient that they are citizens, householders, or freeholders liable to jury service. It is essential that they should also be selected, impaneled, and sworn according to law. It is clear, upon the settled doctrine of this court, that a grand jury could not be legally constituted of persons, however qualified as jurors, who were not drawn, but summoned upon the order of the court. If it is important that they should be selected by lot, it is equally so that they should be taken from the list returned by the assessor. The same reason which makes it imperative upon the courts to observe the direction of the statute in the one case, requires our obedience in the other. 'These restrictions have been imposed for wise purposes. They are guards thrown around the liberties of the citizen. They constitute an important part of the right of trial by jury.' If we were authorized to disregard this direction of the statute, we might dispense with an observance of any other provision. It is useless to comment on the result. The effect might be entirely to break down its provisions."

*Stokes vs. State*, 24 Miss., 621, 624.

The Maryland statutes required the lists of jurors to be prepared by the judges of the Superior Court.

The act provided that the judges or any two of them forming a quorum should *meet* and select the names of 750 persons qualified to serve as grand or petit jurors.

A defendant indicted for murder set up by plea in abatement that the list from which the grand jurors who indicted him had been drawn was prepared by a deputy clerk of the Superior Court mainly from persons on the list of the preceding year who had not served as jurors. The deputy clerk presented the list so prepared to each of the four judges of the Superior Court in their respective court-rooms, and they all adopted and approved it, but without consultation with each other.

Issue was joined on this plea, and by the trial court it was determined that the plea could not be sustained. The defendant was then tried, convicted and sentenced to be hung.

The Maryland Court of Appeals held that the plea should have been sustained. The case was heard by Barthol, C. J., and Stewart, Brent, Miller, Grason, Alvey and Robinson, JJs., Stewart, J., speaking for them all, said:

*"No grand jury could be lawfully assembled in the city of Baltimore, except by virtue of this jury law. If its essential requirements have been disregarded in reference to the selection and summoning of the grand jury in question, that body had no authority to act as such, and any indictment found by them was void, and must be so regarded by the courts as if expressly declared by statute. The legal result is the same. No body of men assembled without authority of law, have the right to assume to act as a grand jury. The current of authority in this country sustains this view. Although there are some decisions of respectable courts, and dicta of eminent judges, to the effect that the objection in question must be taken by challenge to the array or to the polls; yet the decided weight of authority*

in this country, is, that the objection, whether to individual jurors, or to the constitution of the whole body, may be taken by plea in abatement, or motion to quash after bill found, and before plea to the merits. This position is also sustained by sound reason. To confine the right of objection to the qualification of the grand jury to challenge to the array, would, in practice, render it utterly worthless. In many, perhaps in a majority of cases in our criminal practice, the first notice that a party has of an accusation against him is a bench warrant or *capias*, issued upon a presentment or indictment. Where parties are under arrest they are not brought into court when the grand jury are impaneled and sworn, and often have not the opportunity to make the challenge, either to the body or individual members. No list of those who are to compose the grand inquest is ever furnished them; and most generally, they have no means or knowledge upon the subject. To a party thus situated, it would be but a mockery of law and justice to compel him to such defense before indictment found, or to be considered as forever waiving the objection to the competency of the body, alone authorized to make the initial step towards his lawful conviction. It is indispensable, in a criminal trial, that the grand inquest required to find the indictment should be constituted of 'good and lawful men,' and if the body, or any part of it, lie under substantial disqualification, they may be challenged by the prisoner before the bill is presented; or after the finding, the prisoner may plead the objection in abatement thereof.

"We fully concur in the remarks of Judge Hitchcock, in his dissenting opinion in *Boyington vs. State*, 2 Porter, 143, which was subsequently followed in the Alabama decisions overruling the opinion of the majority in that case, 'what principle of public policy can be more sacred than that the sources of justice should be pure? And wherein is the inconvenience greater after bill found than before? A bill is found today, the defendant put on trial to-morrow. He can allege nothing against the grand jury, when the next entry on the minutes may be an

order discharging the same jury, at the suggestion of any idle bystander, against whom no charge is made. Ought not the court rather to say that indictments found by persons not good and lawful men, shall be revoked, annulled and holden for none, forever? If I am to be put on trial for my life, let my accusers, at least, be *boni et legales homines*. See also *State vs. Rockefeller*, 1 Halst., 332; *State vs. Symonds*, 36 Maine, 128; *Doyle vs. State*, 17 Ohio, 222; *State vs. Williams*, 5 Porter, 130; *State vs. Conner*, 5 Blackf., 325; *McQuillen vs. State*, 8 Sm. & M., 587; *Barney vs. State*, 12 Sm. & M., 69; *Low's Case*, 4 Greenl., 439. It results from these views that there has been no legal trial and conviction of the prisoner in this case.

"Under any government of law the trial of persons accused of crime, from its commencement to the conclusion, should be scrupulously conducted according to the requirements of the law. Not only the sacred administration of public and private justice, but the good order of the community, the security and protection of life, liberty, and property, cannot be preserved, except by the inflexible maintenance and impartial enforcement of the statutory, as well as the fundamental laws of the land. Where the substantial provisions of the law have not been regarded, and a party has been convicted in violation thereof, and without their sanction, such party is entitled to a reversal, if legal steps in due time are taken to obtain redress."

\* \* \* \* \*

"Notwithstanding the facts found by the judgment, the court adjudged that the law had been *substantially* complied with, and that the grand jury (whose disqualification the pleas of the prisoner had alleged) was legal, competent, and qualified. There is manifest error in this judgment of the court. From a careful examination of that judgment, we do not think the court has deduced the proper legal conclusion from the facts stated therein. These facts show that the mandatory provisions of the jury law for the city of Baltimore, existing when the grand jury in question was constituted, were not *substan-*

tially complied with. That law declares, amongst other provisions, that the four judges or any two of them, forming a quorum, 'shall meet' at such place in the city of Baltimore, as they shall appoint, on such day in the month of March in each year, as they shall agree upon, and it shall be the duty of the said *judges, meeting* as aforesaid, at such meeting or at such adjourned meeting, as they shall hold for the purposes hereinafter mentioned, in the month of March in each and every year aforesaid, to *select the names* of seven hundred and fifty persons, qualified under the laws of this State, to serve as grand and petit jurors in said city. The collector of taxes is then required to furnish a list of all the taxable male inhabitants of the city, to the judges, in order to assist them in making out the list; and *When* the sheriff is directed, before each term of the criminal court, to summon twenty-three persons from the list prepared by the judges, to serve as grand jurors for the ensuing term of said court. There can be no doubt that the legislature, in the enactment of this law, designed to avoid, if possible, vices then existing in regard to the organization of the juries for the city of Baltimore, and to accomplish a reform in that respect. The responsible duties we have enumerated, were particularly enjoined upon the judges as possessing, in the estimation of the legislature, peculiar fitness for the trust. That from their official station as the ministers of justice, and from their superior intelligence and impartiality, they would be the very best instruments faithfully to carry into execution the provisions of the law. That they would, in person, make selection of upright, impartial and capable persons to serve in the capacity of jurymen in the administration of justice in civil and criminal case. The legislature expressly imposed this important duty upon the judges, and did not authorize them to depute their discharge to others."

\* \* \* \* \*

"The grave and responsible duties required of the judges, were, in fact, attempted to be discharged by one of the deputy clerks. The law never contemplated that juries, to determine life, liberty, reputa-

tion and property, should be thus selected when it had specially and emphatically devolved the duty upon the judges.

"Not only was there no *meeting* for consultation on the part of the judges, for the selection of names of persons to compose the list, but no *meeting* afterwards to approve or reject what had been done by the subordinate official. When presented to each judge separately, it was adopted without particular examination. We cannot give our sanction to such a mistaken execution of this law. Its chief provisions have been disregarded—indeed, virtually abrogated. *It follows from these fatal omissions, that the body of men assuming to act as a grand jury, and to find the indictment in this case, was not qualified to act as such, because the mandates of the law had not been pursued in their selection.*"

*Clare vs. State*, 30 Md., 164, 174.

As in Maryland so in this district the legislature in adopting the code did away with the former jury commission appointed by the court (Rev. St. D. C., sec. 851), and required the important and responsible duty of preparing the jury list to be performed by the three officials named for the very purpose of getting rid of the evils of the old system.

In the opinion of the Court of Appeals it said that while the action of the jury commissioners complained of was a "serious irregularity," it was not shown that the accused suffered any prejudice therefrom (869). If this is a good reply to the pleas in abatement, it would be a sufficient answer if the jury-box had been filled by a bootblack without pretense of authority from anybody.

### **The Tenth Assignment of Error.**

*Relating to the instruction given by the court to the jury, that the jury might convict any one of the defendants alone, including Hyde (848-9).*

When counsel for the defendant Hyde objected to this instruction, the court was informed that the objection was

based upon the ground that it is not competent in any case where two or more persons are charged with conspiracy, and they are all on trial, to find a verdict against one of them only, in any aspect of the evidence, and, further, that as to the defendant Hyde, there was no evidence in the case that would justify a verdict against him alone, even if the principle upon which the court announced that doctrine to the jury is, in the abstract, correct (849).

Upon the first branch of this objection there may be some room for argument upon the authorities, though we contend that the great weight of authority is against the doctrine announced by the court—that is to say, we think the rule is that where two are on trial for conspiracy and one has confessed he cannot be convicted unless the other evidence justifies the conviction of both. As to that the authorities will be presently referred to.

But as to the second branch of this objection it is submitted that all the authorities and every consideration of justice forbid what in this case was held to be the law. Where there is a confession by one, or some other item of evidence which is admissible against him alone, there may be room for the contention that he alone may be convicted. But in this case there is not in the record a word of evidence which was offered against Hyde alone or which would not have been just as admissible *if only the other three defendants had been on trial*. Of course in a trial for conspiracy the separate and independent acts of each defendant are admissible, but they are admissible against all for the purpose of showing by their separate acts that there must have been an *agreement* under which those acts are performed. If their separate acts do not prove such a precedent agreement, they do not for the purposes of that trial prove anything.

Take, for instance, the illustration from one of Lincoln's speeches, which was given to the jury in this case by the learned trial judge in his charge to the jury (822). Suppose that the defendants in this case were on trial for con-

spiracy to erect an illegal structure and the evidence established that each of them brought to the place where the structure was to be erected separate parts, which were found to so fit together that they would make the complete building—"not a piece too many or too few"; that would undoubtedly justify the conclusion that there was a prior agreement between them that such a building should be constructed. But on that evidence alone would anybody suggest that one of them only might be convicted of conspiracy to erect the building?

No doubt it will be argued that if this instruction was erroneous it did no harm, because two were convicted. This is specious but unsound. On this charge the jury may have convicted Hyde of conspiring with Dimond alone and may have convicted Schneider of conspiring with Benson alone. They may have convicted Schneider because of his alleged confession, which was, of course, admitted against him alone, and then have convicted Hyde on the evidence which referred only to transactions between him and Benson.

It may be urged also that Hyde and Schneider may have been convicted of conspiring, not with Benson or Dimond, but with parties unknown to the grand jury, and that this instruction was proper because any one of the defendants might have been properly so convicted. But this instruction deals only with the four men on trial. The case did not go to the jury on the theory that there was evidence that parties unknown to the grand jury had entered with Hyde or anybody else into the conspiracy charged. That appears throughout the charge and especially on page 833, where the court said to the jury: "You are only to consider the question whether *these defendants* conspired in the way alleged, and whether the overt act was committed."

Insisting that the judgment as to both of these petitioners and certainly as to Hyde should be reversed because there was no evidence justifying the instruction under consideration reference will now be made to the authorities on the general question involved in that instruction; that is, under



what circumstances one only of several conspirators may be convicted.

In *Rex vs. Plummer*, L. R., 2 K. B., 1902, upon an indictment containing six counts for conspiracy, one of the three defendants pleaded guilty to the sixth count. He was acquitted as to the other five counts, and the other two defendants were acquitted as to all the counts. It was held by the Court for the Consideration of Crown Cases Reserved that no judgment could be entered upon the sixth count as to the defendant who had pleaded guilty as to that count, because the verdict of the jury acquitting on that count the other two defendants established the fact that there was no such conspiracy as was charged.

The opinions of the several judges in this case are important as showing the view taken by them of the earlier cases in England on this subject.

It should be added that in this case all the judges refer to the fact that the sixth count contained no averment that the conspiracy included "other persons to the grand jury unknown." Of course where that clause is in the indictment and the evidence in the case justifies it, any one of several defendants on trial may be convicted alone.

In *Queen vs. Gompertz*, 9 Q. B., 84, five defendants were convicted of conspiracy to defraud the prosecutor. In granting a new trial, Lord Duncan, C. J., said:

"We might perhaps see no ground for disturbing the verdict so far as it affects Gompertz; but into this we do not inquire; for we cannot grant a new trial as to one conspirator without granting it to all who are convicted."

And Coleridge, in a concurring opinion, said:

"There would have been no difficulty if some had been acquitted and some convicted. That was so in *Rex vs. Mowbray* (6 T. R., 619); and this court held that a new trial might be granted in favor of those convicted, without disturbing the verdict as to those acquitted."

In *Regina vs. Thompson*, 16 Q. B., 832, three were indicted for conspiracy with each other and with other persons to the grand jury unknown. The evidence at the trial was applicable only to the three named defendants. One of them was convicted, and the other two were acquitted. It was held that the verdict as to the convicted defendant could not stand. Lord Campbell, C. J., said:

"But I think the remaining objection is insuperable. The verdict cannot be supported upon the finding of the jury. It is understood on both sides that no evidence has been taken applicable to any one but Thompson, Tillotson, or Maddock. Tillotson and Maddock having been acquitted, the verdict against Thompson alone cannot be supported. It cannot be denied that, where the indictment is only that two defendants conspired together, the acquittal of one involves the acquittal of the other. *Prima facie*, therefore, at least, where the indictment is that three defendants have conspired, the acquittal of two involves the acquittal of the third; for, when the jury declare that neither of those two conspired with the third, it is difficult to see how the third can have conspired with the other two, or with either of them. The only mode which occurred to me of supporting the indictment under the circumstances of this case was by taking the verdict to be, in effect, that Thompson had conspired with Tillotson or Maddock, but the jury did not know with which. But that would be, I think, a bad finding. I cannot conceive how, if an indictment to that effect would be bad, such a special verdict could be good. But then it is said that the verdict supports the indictment, inasmuch as this charges Thompson to have conspired with other persons unknown. But I find it difficult to say that Tillotson or Maddock can fall within the category of 'other persons:' that could not be the meaning of the grand or petty jury. On the last point, therefore, it seems to me that the verdict against Thompson must be set aside, although I regret that he should escape on such a ground."

In *The Queen vs. Manning*, 12 Q. B. D., 241, Lord Coleridge, C. J., had presided at a trial of two for conspiracy. He had instructed the jury that they might convict one defendant and acquit the other. They accordingly convicted Manning and, reporting that they could not agree as to his codefendant, they were discharged as to the latter.

A new trial was ordered by the Queen's Bench Division of the Supreme Court of Judicature, solely on the ground that this instruction was erroneous. Chief Justice Coleridge sat in the appellate court and concurred with the other judges in the conclusion that by the common law, as it had existed, at least from the time of Henry IV, there could not be a conviction of only one alleged conspirator when his co-conspirators were on trial with him.

In 2 McClain's Criminal Law the author, in section 981, deals as follows with this question:

"Joinder of Defendants.—As a conspiracy necessarily involves guilt on the part of two or more persons, if two are indicted for the crime an acquittal of one is necessarily an acquittal of the other. So the entry of a *nol pros*, as to one prevents further proceedings as against the other. If one of several defendants is acquitted, the record of his acquittal is admissible in evidence in favor of another of the defendants subsequently tried. But one of the conspirators may be indicted separately; or if two or more are indicted a separate trial may be granted to one; and judgment may be rendered as against the one first tried, notwithstanding the possibility that the others charged with the same conspiracy may be acquitted. If where two or more are tried together a ground for new trial is shown as to one, the new trial must be granted as to all. The strictness of procedure in the case of principal and accessory requiring that the accessory shall not be punished unless the principal is convicted is not applicable, however, to conspiracy cases; and one conspirator may be convicted although the other has died, so that a conviction will be impossible. If the defendant is indicted for conspiring with other parties

to the grand jury unknown, a failure to convict another will have no effect in regard to the conviction of the one charged. And under the charge against one defendant of conspiring with others named, there may be a conviction on a proof of conspiracy with any of the others named, without proof of such conspiracy participated in by all of them. So, if several are indicted jointly, two or more may be convicted."

In *United States vs. Hirsch*, 100 U. S., 33, the question was whether the three years' statute of limitations applied to a conspiracy to defraud the United States by fraud in importations into the United States, or whether such a case was governed by the five years' statute of limitations applying to crimes under the revenue laws.

It was held that a plea that the conspiracy had been entered into more than three years before the indictment was a good plea in bar.

In delivering the opinion of the court, Mr. Justice Miller said:

"The *gravamen* of the offense here is the conspiracy. For this there must be more than one person engaged. Although by the statute something more than the common-law definition of a conspiracy is necessary to complete the offense, to wit, some act done to effect the object of the conspiracy, it remains true that the combination of minds in an unlawful purpose is the foundation of the offense, and that a party who did not join in the previous conspiracy cannot, under this section, be convicted on the overt act."

In *People vs. Olcott*, 2 Johnson's Cases, 301; 1 Am. Dec., 168, three defendants were charged with conspiracy. One of them died before the indictment was found. On a trial of the other two, one of them was acquitted, the jury being unable to agree as to the third defendant. After the acquittal of his codefendant, the convicted defendant moved the court to discharge him, on the ground that one person could not be found guilty of conspiracy. The motion was over-

ruled, but solely on the ground that the convicted defendant might properly have been found guilty of conspiring with the conspirator who was dead. There is no suggestion in the case that he might have been found guilty of conspiring with the defendant who was acquitted.

This case was in the Supreme Court of New York, and the opinion is by Kent, J.

The New York penal code made it robbery in the first degree when the offender was aided by an accomplice actually present.

Two were indicted under this provision. One was acquitted and the other was convicted. The Court of Appeals set aside the judgment against the one who was convicted, because the verdict against him was inconsistent with the verdict of acquittal as to his co-defendant. The court said:

"The question of a lesser degree of crime is not before us, as it was pleaded and proved that the defendant Munroe robbed the complainant, aided by Barry, who was actually present. The evidence that convicted Munroe also convicted Barry; if it was not sufficient to convict Barry, it is clear that it was insufficient to convict Munroe. The acquittal of Barry amounted to this, in substance: The jury found that Barry was not actually present at the time of the robbery aiding Munroe. This being the fact, how was it possible to convict Munroe of robbery in the first degree? It appears that the trial judge did not charge the jury as to the provisions of section 228 of the Penal Code, defining robbery in the first degree. It also appears that neither counsel requested the court to so charge. The jury were told in the charge, as follows: 'If you find one of the defendants guilty and the other not guilty, you should return such a verdict, specifying the one who is guilty and the one who is not guilty.'

"It is obvious that the jury had no appreciation of the proof necessary to convict the defendant Munroe of the crime of robbery in the first degree. The jury's verdict is as follows: 'We find the defendant, Munroe, guilty *as charged* and recommend him to

the mercy of the court. And we find the defendant, Barry, not guilty.' This verdict necessarily found Munroe guilty of robbery in the first degree.

"The defendant's counsel moved to set aside the verdict on various grounds, this, among others: 'There being no difference in the evidence, there must have been no difference in the minds of the jury of the guilt of the defendants.' The motion was denied and exception taken.

"This question was presented to the general term, first department, in *People vs. Massett* (7 N. Y. Sup., 839), Van Brunt, P. J., writing and Daniels and Barrett, JJ., concurring. Van Brunt, P. J., said: 'The jury in the consideration of this evidence, either must have violated their oaths in the acquittal of Cornell and Lull, or in the conviction of Massett, because, as already stated, the evidence against the one was precisely the same as the evidence against the others. They were all engaged in the robbery or none of them. \* \* \* Juries should not be permitted to render verdicts which are so inconsistent the one with the other.'

"In the foregoing case Massett was jointly indicted with Cornell and Lull for robbery in the first degree. There was no question of dangerous weapon; the three men threw the complainant down upon the floor, held him and took his money.

"The judgment of the county court of Albany county convicting the defendant George E. Munroe of robbery in the first degree, and the judgment of the appellate division, third department, affirming the same, should be reversed and a new trial ordered."

In *People vs. Arnold*, 46 Mich., 268, the court (by Cooley, J.), while holding that a confession by one conspirator is admissible against him, adds:

"If the participation of the other is not made out by independent evidence, there can be no conviction; but the existence of a conspiracy must commonly be made out by the detached acts and statements of the individual conspirators."

In *Casper vs. State*, 47 Wis., 535-43, the Supreme Court of Wisconsin, after holding upon the authority of a long list of cases, mainly English, that separate trials may be granted defendants in conspiracy cases, thus states the proper practice where only one is finally convicted:

"Several of the English cases cited *supra* hold that where one only is found guilty of conspiracy, his co-defendants not being tried, judgment should go against him. When a prisoner is alone indicted for a conspiracy with others unknown, or when he is indicted with others who cannot be taken or brought to trial, there appears to be no valid objection to that practice; for the verdict against him is that he was guilty with others who cannot be brought to trial, and there is no presumption in his favor of their innocence. But where several are prosecuted together, taken, and may be brought to trial, for conspiracy, and, their trial being severed, one only has been tried and found guilty, there is manifest impropriety in proceeding to judgment against him before the trial of his co-defendants. The verdict against him would raise no presumption against them, and their acquittal would be inconsistent with his conviction, and should operate in law to acquit him also. Judgment against him, in such case, would not only be a cruel injustice, but an absurdity, which the law ought not to sanction; for one only cannot be guilty of conspiracy, and judgment against one, upon acquittal of those charged with him, would be not only a wrong to the person, but a blunder in law."

In *State vs. Tom*, 13 N. C. (2 Dev.), 569, two slaves were indicted for conspiring with others. One of the defendants, Donum, was tried and acquitted. The other, Tom, was afterwards tried and convicted. The trial judge instructed the jury that they might find Tom guilty of conspiring with Donum alone, notwithstanding the acquittal of the latter. For this error, the verdict was set aside. Ruffin, J., delivered a very able opinion, which was concurred in by Henderson, Ch. J., in a separate opinion. Both opinions are based en-

tirely upon English cases, no American case being then (1830) brought to the notice of the court.

In *State vs. Jackson*, 7 S. C. (new series), 283, it was held that where two only were indicted for conspiracy and the State entered a *not pros.* as to one, the other could not be convicted.

It does not follow at all that if one of two on trial cannot be convicted alone, even though he has confessed, the evidence of the confession may as well be excluded. Both may have confessed. One may have confessed and the other may have furnished other evidence admissible only against himself. Attempts to escape, making false statements, writing anonymous letters showing guilty knowledge—all such facts may be used as evidence against one defendant, and this, co-operating with the confession by the other defendant, may lead to the conviction of both. But in this case as already shown there was absolutely no evidence that could be used against Hyde alone.

### **The Eleventh Assignment of Error.**

*Relating to the action of the court in allowing the District Attorney, on direct examination of his own witnesses, to examine them as to previous statements made by them to the representatives of the Government and in permitting counsel for the Government, in the final argument to the jury, to use such testimony as to prior statements of the witnesses as evidence tending to show the truth of the statements (364, 392, 394-5, 552-7, 808-9).*

Over and over again during the trial it appeared that the witnesses for the Government long before the trial had made statements to representatives of the Government, generally to a "special agent" or "inspector," and that these statements shortly before they testified in court, were shown to the respective witnesses by the District Attorney or one of his assistants, or by Inspector Neuhausen, who



was present assisting the District Attorney at the trial. Several instances of this are here given:

Woodford D. Harlan, while under cross-examination, testified that during the recess of the court he had looked at a statement that he made to Inspector Burns on the 19th of December, 1903, and that he had refreshed his memory from that (354).

Edward Long testified that in 1903 and 1904 he made a statement to Mr. Pugh and swore to it, being informed that Mr. Pugh was a Government officer and had a right to demand the statement, and he added that Mr. Neuhausen had shown him that statement after he came to Washington to testify (414).

E. E. Page testified that he had made out a statement for Mr. Pugh and signed it. On cross-examination he at first stated that he believed that he had not seen that statement since he came to Washington, but upon being asked whether or not he was sure that he had not seen it, he said he had read it that very morning; that Mr. Neuhausen showed it to him that morning (420, 421).

Otto Zinns testified that he had signed and sworn to a statement for Mr. Neuhausen, and that the statement was exhibited to him the day before he testified (454).

Thomas S. Burns, a notary public, having testified on his direct examination by the District Attorney that the only papers to which he certified that they had been acknowledged before him when the party did not actually appear were "all Mr. Hyde's office papers, powers of attorney, and things of that kind, signed by F. A. Hyde himself," was examined as to whether or not he had made to Mr. Neuhausen a written statement dated the 5th day of February, 1907, which was exhibited to him by the District Attorney. The witness was then examined by the District Attorney at great length as to this paper and the statements contained in it. The court allowed the examination to proceed in that way solely because the District Attorney stated

that the Government was taken by surprise by the witness' testimony, the District Attorney being given this privilege by the court expressly and solely under the provisions of section 1073*a* of the District Code (488, 489, 490, 491) authorizing such a course for the purpose only of discrediting the witness. It appeared during this examination that the statements which the witness had so made to Mr. Neuhausen had been exhibited to him by the District Attorney and Mr. Neuhausen before he testified (490).

Henry B. Tricou testified that a year before he testified a statement had been obtained from him by the Government in San Francisco, and that he signed and swore to the statement; and he added, "They showed it to me. I read it to refresh my recollection" (510).

Moses Greenblatt testified that he had made a statement to the agents of the Government in San Francisco and had talked to them once since he came to Washington. He said, "That was this morning." He does not say directly that his previous statement had been shown to him that morning, but that is a fair inference (514, 515).

Rebecca L. Newman testified that she had made a statement about a year before to some one representing the Government—that she signed the statement and swore to it. She said further, referring to this statement, "It was read over to me and the paper has been shown to me since by the gentleman sitting here" (indicating Mr. Neuhausen) (548).

Tillie A. Fleischauer testified that she had previously made an affidavit to Mr. Neuhausen, and that that statement had been read over to her either by Mr. Neuhausen or somebody else, while Mr. Neuhausen was present, on the day that she testified (550, 551).

Referring to the matter of the particular exceptions now under consideration they arose as follows:

William E. Valk, on his direct examination, having testified that he did not recall having had a conversation with Benson in regard to forest reserves, proceeded thus:

Q. [By the District Attorney:] Now, let me see if I can refresh your memory. Do you recall going over that testimony, the memorandum of your testimony, with me?

"A. A day or two ago?

"Q. Yes.

"A. I do.

"Q. Do you remember——

"MR. WORTHINGTON: I object to any question being asked by the Government as to what this witness has said to Mr. Baker out of court, unless it is put upon the ground that the Government was taken by surprise and asks it for the purpose of discrediting the witness."

Thereupon the District Attorney stated that he asked the question *for the purpose of refreshing the memory of the witness*; and the court permitted the examination to proceed for the purpose. The witness then admitted that he had stated to the District Attorney that Benson had said something to him about forest reserves and that he, Valk, had told Benson that that was outside of his jurisdiction.

It was distinctly stated by the court that the court did not think the witness was hostile, and that he allowed the examination to go on in this way as a matter of discretion, *to refresh the witness' recollection* (364, 365).

S. J. Holsinger, on his direct examination, testified that when he saw Schneider in Tucson, in the fall of 1902, Schneider told him that Superintendent of Forests Allen was invited to come to the office and was very soon given the privileges of the office, and that Schneider further said of Allen: "He usually entered by a private door of Benson's office" (392). Later in the direct examination the District Attorney showed the witness his report of November 18, 1902, in evidence (336), and then asked the witness, referring to his testimony just given, whether it was at Benson's office or at Hyde's that Allen called.

This question being objected to by counsel for the defendants, the District Attorney said, "I will read the report

and ask him to *refresh his memory* from reading the report." This was objected to by counsel for the defendants, on the ground that the witness had testified that the report was made six days after the witness' interview with Schneider, and that therefore it was not competent for the witness to refresh his memory by it. But the court allowed Holsinger to read his report and then to state that his memory was refreshed by it, and to say that when he gave the testimony about Allen coming to Benson's office he had F. A. Hyde's office in mind—that when he spoke of Benson's office he meant Hyde's—that he used the names interchangeably, because Schneider told him that they were one and the same concern and he did not know that Benson had a separate office (394, 395).

From Holsinger's report it will be seen that his conversation with Schneider, upon which his report was based, was had on November 6, 1902 (391). This was twelve days before he made his report.

Tillie A. Fleischauer, on her direct examination by the District Attorney, was asked to give the facts about a certain conversation that she had had in San Francisco with Benson and his counsel, Mr. Campbell, when it was claimed by the Government Benson had endeavored to get the witness to make a statement not in accordance with the facts. Her testimony on this subject, being apparently not satisfactory to the District Attorney, he said:

"Now, let me see if I cannot refresh your recollection. You made a statement to Mr. Neuhausen, did you not?

"A. Yes.

"Q. When did you make that statement?"

At this point one of the counsel for the defendants inquired whether this was done for the purpose of discrediting the witness. The court ruled, however, that the District Attorney would be allowed to ask the witness as to the contents of the prior statement to Mr. Neuhausen *for the pur-*

*pose of refreshing the witness' recollection*, stating that when the District Attorney came to ask her what she said another question would be presented. Defendants' counsel having excepted to this ruling, the witness was further examined by the District Attorney, and stated, among other things, that on the day she was giving her testimony the affidavit that she had made to Neuhausen had been read over to her, and that she had told Neuhausen that she made several little mistakes in it. She was then examined by the District Attorney about these alleged mistakes, this being done over the objection of the defendants and the court holding that the examination was admissible without regard to section 1073a of the District Code, to which ruling counsel for the defendants again excepted (552). Thereupon she was again shown the affidavit in question and asked whether she had not stated, after having that affidavit read to her, that it was all true except a certain part which was included in brackets. She was then further asked by the District Attorney as to what she had said in the affidavit about her conversation on the occasion in question with Benson and Mr. Campbell. The court at this time permitted the examination for the purpose of allowing the District Attorney to show if he could that he was surprised, so as to make the testimony admissible under section 1073a (550, 552, 557).

When Mr. Pugh, of counsel for the Government, was making the opening argument to the jury after the evidence was closed, he referred to the testimony of Thomas S. Burns, and said that the witness, *after having his memory refreshed by the affidavit read to him that he had made Neuhausen*, on going over the matter again in his mind, admitted that the statements in the affidavit were all true; and the District Attorney interrupted the arguments by remarking that Burns had admitted that those statements were true and correct.

Thereupon counsel for Hyde objected to any use being made of the witness' affidavit to Neuhausen for any purpose

except that of showing the jury that the witness was not a credible witness; but the court allowed the argument to proceed, stating that the court had allowed the witness' memory to be refreshed by asking him certain questions as to what he had previously said, and on being reminded of those the witness had said that they were true, thereby making them a part of his testimony. And the court added: "It was only a method of introducing that evidence so that he made it his own and verified it. The jury have nothing to do with that at all" (808, 809).

To this ruling counsel for the defendants excepted.

Thereafter, protected by this ruling, Mr. Pugh proceeded to read to the jury from the testimony of Tillie A. Fleischer statements by her, admitting that certain things which she had said in her affidavit to Neuhausen were true (809).

For a hundred years and more the courts of England and the courts in this country, State and Federal, have attempted, with little success, to reach a satisfactory conclusion and agreement as to what should be the rights of a party whose own witness has taken him by surprise (by giving adverse testimony) in regard to letting the jury know that he was induced to put the witness on the stand by the fact that the witness had led him to believe that his testimony would be favorable. It is insisted, on behalf of this appellant, that that controversy was put to rest in this jurisdiction when Congress placed section 1073a in the District Code. That section is as follows:

"SEC. 1073a. Whenever the court shall be satisfied that the party producing a witness has been taken by surprise by the testimony of such witness, such party may, in the discretion of the court, be allowed to prove, for the purpose only of affecting the credibility of the witness, that the witness has made to such party or to his attorney statements substantially variant from his sworn testimony about material facts in the cause; but before such proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned

to the witness, and he must be asked whether or not he made such statements and if so allowed to explain them.—Act of June 30, 1902 (32 Stat., p. 540)."

It is denied that there is any room for construction in this language. Waiving the point that Mr. Neuhausen was neither the United States nor its attorney, the fact remains that if the act of Congress means anything, it means that one who claims to be surprised by having his own witness "go back" on him may not introduce evidence of the former statements of the witness, unless he is willing to do it for the purpose only of showing that the witness is unworthy of belief. Yet in this case, against the objection of the defendants based upon section 1073a, witness after witness for the Government was shown his prior affidavits made to agents of the Government, and his statements in those affidavits were got before the jury as affirmative evidence for the Government. And the counsel for the Government were permitted, over a like objection, to read this parrot-like evidence to the jury, and upon it to ask the jury to convict the defendants.

It must be remembered that Mr. Neuhausen, as special agent, had the right to administer an oath, and so had Mr. Pugh, and that if any witness who had sworn to a statement before either of them testified at the trial that anything in that statement was not true, he was liable to be prosecuted for perjury and confronted at his own trial with his admission that he had sworn falsely. We have seen how carefully Mr. Neuhausen, or some other representative of the Government, read over to each witness his former affidavit just before he went on the stand. Now if the Government in a criminal case, in advance of the trial, may have every witness nailed to an *ex parte* sworn statement, may have such statement read over to the witnesses just before they give their testimony at the trial, and if, in any respect, any of them in their testimony in court depart from their former statement, may prove by the witness such former statement, and ask if *that* is true, and if

all this may be done, not to show the unreliability of the witness, but to get the former statement in evidence as testimony in the case, then what practical benefit does the right to be confronted by the witness give? And what becomes of section 1073*a*, which forbids the use of former statements of a witness in any such way?

But, laying aside the Constitution of the United States and the act of Congress, what is the law on this subject as established by the courts? We refer to the authorities and leave that question with the court.

In *Doe against Perkins*, 3 T. R., 750, 752, Lord Kenyon, Ch. J., read the following note from the MS. of the late Lord Ashburton:

“Mr. Noel moved to suppress depositions on a certificate from the commissioners, before whom they had been taken, that the witness, whose depositions they were, refreshed her memory during her examination by minutes consisting of six sheets of paper of her own handwriting, the substance of which she declared to them she had set down from time to time as the facts occurred to her memory; that five of the six sheets were drawn up in the form of a deposition, which she told them was done by the plaintiff's solicitor, whom she had requested to digest her notes and reduce them to some order; and that after he had done so she transcribed and altered them wherever it was necessary to make them consistent with her meaning. The certificate added further that she had declared the six sheets to have been entirely drawn up by herself unassisted by any person whomsoever; that as they apprehended they had no right to take the minutes from her, she had frequent recourse to them during her examination: and this certificate was signed by all the commissioners. Mr. Noel insisted that this practice was too dangerous to have the countenance of the court; and that there was a sufficient foundation for this application to suppress the depositions. The motion was opposed by the attorney, and solicitor general, who insisted that nothing was more frequent than to allow witnesses



in a court of law the use of minutes to refresh their memory. That the only circumstance which seemed to distinguish this case from that, and to give a colour to the present application, was the witness's employing the plaintiff's attorney to digest her memoranda; but there could not be much weight in that circumstance, when it was considered that it was not pretended that there had been any tampering with the witness, and that she had carefully altered these papers wherever the attorney had mistaken her meaning; that she swore positively to the truth of every part of them; and though it might be improper to write the whole of a deposition before examination, yet where a person was to be examined to a great number of dates, &c., it was very necessary to have some help of this kind. *Lord Chancellor:* Whether there has been any tampering or not I know not; but I know there has been a great mistake both by the parties and the commissioners, who however did right after their mistake, to lay it before the court. Should the court connive at such proceedings as these, depositions would really be no better than affidavits; for should a witness be permitted to use a paper, especially one drawn up by the attorney of one of the parties, though from memoranda furnished by the witness, I might as well let the attorney draw an affidavit for her, and use that instead of a deposition. She insists indeed that she altered and amended it, but everybody knows that slight alterations in a phrase make it convey very different ideas. To be sure in some cases a man may use papers at law, but I have known some judges (and I think I adhered chiefly to that rule myself) let them use only papers drawn up as the facts happened, and all other papers I have bid them put in their pockets; and if any had been offered which were drawn by the attorney, I should have reprimanded him severely. As to dates and names, which are merely technical, it is quite another thing. The commissioners should have rejected these depositions; but as they have fairly represented the fact, and the whole of the motion is to suppress the depositions, for the precedent's sake they shall be sup-

pressed. And as publication is not passed you may examine the witness. The chancellor seemed to intimate that he would have animadverted on the attorney, had it been made part of the motion."

In *Ellicot vs. Pearl*, 10 Pet., 412, 441, one of the parties produced a witness who, on cross-examination, made certain statements injurious to the party who called him. Thereupon that party offered to prove by the witness that, in writing, upon a certain plat which was produced, the witness had theretofore made statements inconsistent with the testimony he gave on cross-examination. It was held that the trial court properly excluded the evidence so offered, saying:

"Strictly speaking, the defendants had no right, upon the principles already stated, to give in evidence any other prior statement of McNeal to confirm his testimony; but in truth the evidence was offered to discredit in part his present testimony, and certainly the demandants are not at liberty to discredit their own witness by showing his former declarations on the same subject, though they might show by other witnesses that he was mistaken."

In *Walsh vs. Rogers*, 13 How., 282, 287, the Supreme Court, in referring to the provision of the act of Congress permitting the use in civil cases in some instances of *ex parte* depositions, uses this language:

"Besides, it is contrary to the course of the common law; and, except in cases of mere formal proof (such as the signature or execution of an instrument of writing), or of some isolated fact (such as demand of a bill, or notice to an endorser), testimony thus taken is liable to great abuse. At best, it is calculated to elicit only such a partial statement of the truth as may have the effect of entire falsehood. The person who prepares the witness and examines him, can generally have just so much or so little of the truth, or such a version of it, as will suit his case."

In *Maxwell vs. Wilkinson*, 113 U. S., 656, 658, the court said:

"The witness, according to his own testimony, had no recollection, either independently of the memoranda, or assisted by them, that he had filed a protest with the collector; did not know when he made the memorandum in pencil; made the memorandum in ink twenty months after the transaction, from the memorandum in pencil, and probably other memoranda, since destroyed and not produced, nor their contents proved; and his testimony that he did file the protest was based exclusively upon his having signed a statement to that effect twenty months afterwards, and upon his habit never to sign a statement unless it was true.

"Memoranda are not competent evidence by reason of having been made in the regular course of business, unless contemporaneous with the transaction to which they relate. *Nicholls vs. Webb*, 8 Wheat., 326, 337; *Insurance Co. vs. Weide*, 9 Wall., 677, and 14 Wall., 375; *Chaffee vs. United States*, 18 Wall., 516.

"It is well settled that memoranda are inadmissible to refresh the memory of a witness, unless reduced to writing at or shortly after the time of the transaction, and while it must have been fresh in his memory. The memorandum must have been 'presently committed to writing,' Lord Holt in *Sandwell vs. Sandwell*, Comb., 445; *S. C.*, Holt, 295; 'while the occurrences mentioned in it were recent, and fresh in his recollection,' Lord Ellenborough in *Burrough vs. Martin*, 2 Camp., 112; 'written contemporaneously with the transaction,' Chief Justice Tindal in *Steinkeller vs. Newton*, 9 Car. & P., 313; or 'contemporaneously or nearly so with the facts deposed to,' Chief Justice Wilde (afterwards Lord Chancellor Truro) in *Whitfield vs. Aland*, 2 Car. & K., 1015. See also *Burton vs. Plummer*, 2 Ad. & El., 341; *S. C.*, 4 Nev. & Man., 315; *Wood vs. Cooper*, 1 Car. & K., 645; *Morrison vs. Chapin*, 97 Mass., 72, 77; *Spring Garden Ins. Co. vs. Evans*, 15 Maryland, 54.

"The reasons for limiting the time within which the memorandum must have been made are, to say

the least, quite as strong when the witness, after reading it, has no recollection of the facts stated in it, but testifies to the truth of those facts only because of his confidence that he must have known them to be true when he signed the memorandum. *Halsey vs. Sinsbaugh*, 15 N. Y., 485; *Marely vs. Shultz*, 29 N. Y., 346, 355; *State vs. Rawls*, 2 Nott. & McCord, 331; *O'Neill vs. Walton*, 1 Rich., 234."

In *Vicksburg, etc., R. R. vs. O'Brien*, 119 U. S., 99— a personal injury case—the trial court allowed the plaintiff to read to the jury a statement made by the plaintiff's physician while treating him for his injuries. This statement was first shown to the witness and he was asked if it represented substantially and correctly the plaintiff's condition, which question he answered in the affirmative. He was further examined and his evidence was in accordance with the statement. It was claimed by the plaintiff's counsel that for this reason the defendant was not injured by the reading of the statement to the jury; but the Supreme Court held otherwise. It said:

"We are unable to say that the defendant was not injuriously affected by the reading of the physician's certificate in evidence. It is not easy to determine what weight was given to it by the jury. In estimating the damages to be awarded in view of the extent and character of the injuries received, the jury, for aught that the court can know, may have been largely controlled by its statements. The practice of admitting in evidence the unsworn statements of witnesses, prepared, in advance of trial, at the request of one party, and without the knowledge of the other party, should not be encouraged by further departures from the established rules of evidence.

"While this court will not disturb a judgment for an error that did not operate to the substantial injury of the party against whom it was committed, it is well settled that a reversal will be directed unless it appears, beyond doubt, that the error complained of did not and could not have prejudiced the rights of the party. *Smiths vs. Shoemaker*, 17 Wall., 630.

639; *Deery vs. Crag*, 5 Wall., 795; *Moore vs. Nat. Bank*, 104 U. S., 625, 630; *Gilman vs. Higby*, 110 U. S., 47, 50."

In *Putnam vs. U. S.*, 162 U. S., 687, 691, a witness for the Government at the trial was asked on his direct examination whether the defendant had at any time told the witness what he had done with certain bonds, and the witness answered, "Not that I now recollect." Thereupon, over the objection and exception of counsel for the defendant, the trial judge allowed the District Attorney to refresh the recollection of the witness by asking him if he had not said to him on a certain occasion, "I will get the bonds for you as soon as I can," and the witness answered, "Yes, I can assent to that."

Solely because the counsel for the United States was permitted in this way to refresh the recollection of the witness, the Supreme Court set aside the verdict as to the count to which the testimony related. Mr. Justice White, in delivering the opinion of the court, reviews the authorities so fully that it is deemed unnecessary to incorporate them into this brief.

In concluding the opinion upon this point, Mr. Justice White said:

"Brevity prevents a detailed review of the other cases on this subject previously mentioned in the margin hereof. Suffice it to say that an examination discloses that they all rest upon the mistaken idea which we have pointed out. Indeed, if the principles upon which these cases necessarily rest are pushed to their logical conclusion, they not only under the guise of an exception overthrow the general rule as to refreshing memory, but also subvert the elementary principles of judicial evidence. The fact that these consequences are the legitimate and necessary outcome of the cases we have reviewed, depends not on mere abstract reasoning, but is demonstrated by the case of *People vs. Kelly*, 113 N. Y., 647, 651 (1889). In that case, upon the sole au-

thority of *Bullard vs. Pearsall*, it was held that where inconsistent or adverse statements had not been given by a witness for the State, but, from mere forgetfulness or a wish to befriend the accused, the witness had omitted to testify to certain details, error had not been committed by the court in allowing the prosecuting attorney, for the purpose of refreshing the recollection of the witness, to inquire of him whether he had not testified to the omitted facts before the committing magistrate and grand jury, and, upon his admission that he had done so, to ask if the statements theretofore made were not true, and that the affirmative reply of the witness was competent evidence to submit to the jury. Not only the error but the grave consequences to result from such a doctrine were aptly pointed out by Chief Justice Shaw in *Commonwealth vs. Phelps*, 11 Gray, 73, where an attempt was made to refresh the memory of a witness by reference to testimony before a grand jury not contemporaneously given. The Chief Justice said:

“It is not a regular mode of assisting the recollection of a witness to recur to his recollection of his testimony before the grand jury. If it was not true then, it is not true now; if it was true then, it is true now, and can be testified to as a fact. Of what importance is the fact that he had a memorandum to aid him in testifying before the grand jury? To ask what he testified to before the grand jury has no tendency to refresh his memory. The fact of his having testified to it then is not testimony now. It is an attempt to substitute former for present testimony.”

“Equally lucid and cogent are the expressions of the Supreme Court of Pennsylvania in *Felott vs. Lewis*, 102 Penn. St., 326, where, in holding that the memory of a witness could not be refreshed by reading to him notes of testimony given by him in a former trial of the same cause, the court said (p. 333): If the fact that ‘a witness failed to recollect what he had previously sworn to were enough to admit the notes of a former trial, we might as well abandon original testimony altogether, and supply it with previous notes and depositions.’ ‘It would

certainly be an excellent way to avoid the contradiction of a doubtful witness, for he could always be thus led to the exact words of his former evidence. As we are not yet prepared for an advance of this kind, we must accept the ruling of the court below as correct.' "

In *United States vs. Cross*, 20 D. C., 365, 377—a capital case—the defense called as a witness a physician, whose testimony not being satisfactory to counsel for the defendant, he was asked by defendant's counsel whether at a former trial of the case he had not made a certain statement inconsistent with his later evidence. It was held that an answer to this question was properly excluded, and the court, in general terms, speaking by Mr. Justice Cox, said:

"Exception 22 is to the disallowance of a question propounded to Dr. Crook, who was called for the defense. He is one of the surgeons who attended the deceased. The question is: 'I will ask if you did not say on the previous trial that if no obstruction had intervened the ball would have passed in, coming out at a lower point?' This question was not allowed to be asked. The first objection to it is that it is obviously cross-examination, and he was the defendant's own witness. And in the next place it is an attempt to show what he testified to on a former trial, which is never allowed except when the witness is dead, or has departed from the jurisdiction and cannot be produced. When he is present he must give his present knowledge of it and not testify to what he said before. And when it is stated that the object of an inquiry was to simply refresh his memory by a reference to what he said before, the answer is, that he can only refresh his memory by reference to some record of entry or memorandum and not by hearing his former oral testimony repeated to him."

In *Richardson vs. Golden*, 3 Wash. C. C., 109, an objection to depositions was sustained because each of the witnesses was shown an *ex parte* certificate of facts and asked if it contained the truth. Justice Washington (of the Supreme

Court, holding a circuit court of the United States in Pennsylvania) said:

"The mode pursued in this case is calculated to produce perjury. It is worse than asking leading questions or telling the witness what to say; because he is here reminded of the necessity of swearing to what he has before stated, or of suffering in his credit."

In *Emerson vs. Nimocks*, 88 Fed. Rep., 280—a patent case—an expert, in giving his testimony, had used certain typewritten sheets which had been originally prepared by counsel, but which had been revised and amended by the witness himself before he gave his testimony. In considering an objection to the testimony Circuit Judge Simonton said:

"Can this testimony be admitted? If an expert in a patent case had himself reduced to writing the result of his examination of a patent, and had then read it, this may not be objectionable. So much depends upon clear exposition of the thought and a careful use of words and sentences that previous consideration and preparation would help the examination. But when the paper is prepared by counsel, who is cognizant of the strength and weakness of his case, and whose dominant idea must be a plausible presentation of its merits and concealment of its demerits, who also prepares the paper without the restraint of his oath, a very different result follows. All men are prone to fall in with the current of thought in a clear and able presentation of a subject, and unconsciously to give their assent to that which is so well expressed. The course adopted here is perilously near a leading question. According to Greenleaf on Evidence (section 438), a lord chancellor indignantly suppressed a deposition made up by counsel from notes of the witness himself. And the weakness of all evidence offered in the shape of affidavits is that the testimony is by one given in the language of another. In the present case the evidence is that of an expert. It is an opinion. Its



value is gauged by the weight to be given to the opinion. Delivered in this way, it loses very much of the respect which otherwise would have been given it. For this reason it is not stricken out."

In *People vs. Eclo*, 131 Mich., 519, in which the defendant was charged with having had unlawful relations with a girl, she, as a witness for the prosecution, denied having lived with the defendant. The State was allowed to prove her prior declarations, which tended strongly to show that she had lived with him.

Of the five judges in the appellate court three held that the evidence of the girl's prior admissions was competent solely to affect her credibility, and two dissented on the ground that it was not admissible even for that purpose.

In *Cox vs. Eayres*, 55 Vermont, 33, after a full review of the conflicting case, on this subject, it was decided, in accordance with what the court said is the great weight of authority in this country, that a party calling a witness may not, when surprised by his adverse testimony, impeach him either by general evidence or by proving his prior inconsistent declarations out of court.

In *O'Neale vs. Walton*, 1 Rich (S. C.), 234, three witnesses who had forgotten the facts as to a matter in controversy had previously signed a paper prepared by the party calling them, purporting to state what had occurred in the conversation between the parties to the suit. The trial court allowed the paper to go to the jury on behalf of the party who had prepared it. In holding that this was error the Supreme Court of South Carolina said:

"But where facts are noted by a party interested, and then suggested to witnesses, at the distance of weeks after they have transpired, what security would there be under the operation of such a practice? All the advantages of a cross-examination would be taken away, while all the mischief of leading questions would be introduced. All that an

evasive or false witness would have to do, when he was under the ordeal of a cross-examination, would be to take refuge in his paper. And a witness of criminal facility would find his instructions in a paper of a friend, having all the characteristics of a leading examination. It is by no means certain that the witnesses before the court would have subscribed the paper prepared for them, if they had been subjected to the influence of an adversary examination; they certified what they did not think at the time would be used as evidence at all. Certificates of the kind are given with too much facility, and when given, they sometimes control the conscience of witnesses, under the influence of pride of opinion, or from some fear that a different statement might affect their veracity. A man may impose on himself the restraints which should bind him, but the duress of third persons, obtained by artful address or unsuspected contrivance, should meet with no countenance from a court of justice, that should encourage the freedom and independence of witnesses. The paper which the witnesses had to refer to in the case before us, may have had a very different influence on different witnesses. Some it would have instructed—others it would have embarrassed—whilst others again would not have had the moral courage to contradict its statements, although they may have been satisfied that they were not altogether correct. Those who make their own statements, for the purpose of preserving and maintaining truth, may be trusted under the influence of their own conscience; but when third persons, and those who are interested, prepare the memorial suspicion will assail, and justice should repudiate it."

In *State vs. Jackson*, 7 S. C. (New Series), 283, the same court said:

"While a party is allowed great latitude in examining an unwilling witness, though his own, he is not at liberty either to attack his credibility directly or to prove declarations inconsistent with his evidence in court."

*Maloney vs. Martin*, 81 App. Div., 432, well illustrates the difficulties encountered by courts, where the matter is not settled by statute, in determining to what extent and for what purpose a trial court may permit a party to examine his own witness as to prior statements by the witness inconsistent with his testimony. It was there held (three judges concurring, two dissenting) that such examination may be allowed to explain the testimony of the witness in the light of his former sworn statements, *or to account for the surprise of the counsel at the adverse attitude of the witness!*

The majority opinion admits that the doctrine of the earlier cases in New York, to which it refers and upon which it relies, was disapproved of in *Putnam vs. United States*, 162 U. S., 687.

It is to be presumed that the judges and lawyers of this District who revised Judge Cox's work in the preparation of our Code, and the members of Congress who as to section 1073a adopted it as it was submitted to Congress, well knew the difficulty the courts had had in dealing with the admissibility of prior declarations of a witness who turns out, through malice or ignorance, to be adverse to the party calling him. That section 1073a was placed in the Code could only be because it was intended to prevent such difficulties in the future by laying down one rule to apply in all such cases. If the rulings of the court below in this case on this subject are to be affirmed, that section of the Code might as well be crossed out.

### The Twelfth Assignment of Error.

*As to the refusal of the court to permit the defendants, by the witness Dalzell, chief clerk of the Dead Letter Office in Washington, to prove that certain envelopes addressed to John P. Jones never reached the Dead Letter Office.*

On the cross-examination of Schneider it appeared that after Holsinger's report had reached the General Land Office, and while the Government, through its agents, was endeavoring to get from Schneider a further statement, he, Schneider, went to Mexico and remained there for some time. He was asked by the District Attorney whether, while he was in Mexico, he did not go under the name of John P. Jones, and he replied that he did, while he was at a place called Alamos (757).

On his redirect examination by counsel for Hyde, Schneider stated that there were two reasons why, when in Mexico, he went for a time under the name of John P. Jones. One of the reasons, he stated, was that he had been considerably "badgered" in Tucson, and the other that he was afraid of the postmaster in Tucson, Knox Corbett; that he had missed letters which people afterwards said they had written to him, and he had never gotten them; that, on many occasions, letters had come to him which showed that they had been opened and read, and he was afraid to have anything to do with the postmaster, and for that reason Mr. Hereford, his counsel in Tucson, told him to take another name, and he did so. He further said that at this time his wife, who remained in Tucson, wrote letters to him, addressing him as John P. Jones, and that nobody else did (767).

The next day, while Schneider was still under redirect examination, recurring again to this subject, Schneider stated that he had seen some of the letters from his wife to which he referred "right on the desk." Being asked on what desk and in whose possession, he answered: "They were

in the possession of the Government." Thereupon counsel for Hyde asked the District Attorney to produce the letters, and they were produced, and turned out to be, as the witness stated when he saw them, letters written by Schneider's wife to him, addressed to him in Mexico and enclosed in envelopes, which had been opened, addressed to him as John P. Jones. Thereupon the District Attorney offered the envelopes in question in evidence; and the court, responding to an objection made by counsel for Hyde, said that the statements made by counsel during the examination of the witness on this subject were not in evidence unless the envelopes themselves were before the jury. Thereupon counsel for Hyde said: "Very well; let them go in for that purpose." The court at this time remarked, "This, I suppose, to be in corroboration of the statement of the witness as to why he changed his name?" And the District Attorney replied, "Yes; that is what we understand it is offered for; otherwise we would have objected to it" (769-70).

These envelopes will be found on page 770 of the record. There are three of them, and they are all postmarked "Tucson, Ariz." The post-office stamp on each of them bears a date included within the time that Schneider testified he was in Mexico.

Thereupon counsel for Hyde called to the witness stand, first, the District Attorney himself and then Mr. Pugh, of counsel for the Government, and they were asked how these envelopes and letters came into their possession. The District Attorney said he got them from Mr. Pugh. When Mr. Pugh was asked where he got them, the District Attorney objected. Whereupon counsel for the defendant Hyde stated that the evidence was offered for the purpose of corroborating Schneider's testimony that his mail was tampered with. The court thereupon stated that the Government had brought out the fact that Schneider was going under an assumed name, and that Schneider gave as a reason for it that he did not want his mail interfered with, and that it had been interfered with, and that the court thought it was sufficiently in cor-

roboration of that statement, considering the way the matter came in, to make this admissible. The court further said that, the objection being withdrawn, counsel could proceed with the examination.

Thereupon Mr. Pugh stated that the letters in question came into his possession in an envelope taken from the safe of the Secretary of the Interior some time after Inspector William J. Burns withdrew from this case, or some time after he severed his Government connection with it (771).

Mr. Pugh further stated that William J. Burns was then in San Francisco (771).

Thereupon counsel for the defendants called to the witness stand C. M. Dalzell, Chief Clerk of the Dead Letter Office of the Post-Office Department, and offered to prove by him that the envelopes in question, addressed to Schneider under the name of John P. Jones, never reached the Dead Letter Office; and counsel stated that the evidence already before the jury left room for the Government to contend that those letters had been to the Dead Letter Office and had been opened there, and might have gotten into the possession of the Secretary of the Interior or Mr. Burns honestly, and that this witness was called for the purpose of closing that gap, but the court excluded the testimony (799-800).

It seems to the undersigned that this was a manifest error and one that must have resulted in great injury to the defendants. The fact that, while Schneider was in Mexico, he passed under an assumed name could not fail, if unexplained, to bear heavily against him in the minds of the jury. He testified, in explanation, that he had found that some letters which were addressed to him never reached him, and others gave evidence of having been opened before they were delivered to him. It was very important for him and for all the defendants that his statement in this regard should be corroborated, if it could be corroborated. The jury might give little weight to what *he* said because of the great interest he had in the result of the trial. The court did not fail to remind the jury, in the final charge, of the importance, in

deciding what credence to give to the testimony of witnesses, of considering, among other things, the interest that the defendants had in the result of the trial (854).

The defendants undertook to corroborate Schneider's testimony in this regard by evidence which could not be gainsaid. They were allowed to show that letters written to Schneider by his wife, mailed at Tucson and addressed to him in Mexico, came into the possession of the Secretary of the Interior and, from his office, into the hands of counsel representing the Government at the trial. But all this amounted to nothing, unless followed up by evidence to show that the letters had not been forwarded to Mexico in due course of mail and been returned to the Dead Letter Office in Washington because the addressee could not be found.

It was no ground for the exclusion of this evidence that it might lead to the conclusion that Inspector Burns or Postmaster Corbett had been engaged in rifling the mails. The right of one on trial in a criminal case to have competent evidence in his behalf go to the jury is not to be denied because, besides benefiting him, it will show that some of the witnesses for the Government have been committing a crime far more heinous than that involved in the case on trial.

The Court of Appeals on this subject says (883) it is apparent that these letters had been wrongfully obtained by agents of the Government; *that the mere fact that they had not passed through the Dead Letter Office would add nothing to that fact; and that moreover if the letters had been received in that office they should have been returned to the writer and not delivered to other persons!*

But clearly the fact that if the letters had gone to the Dead Letter Office they could not properly have gotten into the hands of Burns does not prove that they did not go to that office. It is, to say the least, as likely that they would have been abstracted from the Dead Letter Office after they had been opened there for a proper purpose as that they

would be taken from the mails and criminally opened by Corbett or Burns. If they did go to the Dead Letter Office, Schneider's testimony as to his reason for taking the name of Jones stood wholly uncorroborated.

In a close case like this, in which, as will be seen, it took the jury about seventy-two hours to reach a verdict, the exclusion of this evidence might well have turned the scales against the two defendants who were convicted. It was said by Mr. Justice Peckham, in delivering the opinion in *Crawford ex. U. S.* (212 U. S., 183, 205):

"It is hardly possible to imagine a case where greater care was necessary in regard to the exclusion of proper and admissible evidence than in the case before us. \* \* \* The error committed was not in our opinion clearly shown to have been harmless."

Surely to one on trial charged with crime, when the Government proves, as a circumstance indicating guilt, that after the commission of the alleged offense he assumed a fictitious name, nothing can be more important than that he should be permitted to prove that he had a good and sufficient reason for changing his name—a reason that implied not only that there was no guilt on his part, but that those who had worked up the prosecution against him had unavailingly resorted to infamous methods to obtain evidence against him.

### **The Thirteenth Assignment of Error.**

*As to the instruction of the court to the jury, in substance, that if applicants for State lands before making their application had an agreement with other persons to turn the lands over to them so that the applicants were merely acting as tools or figureheads, the deeds granted by the State pursuant to such applications were invalid (850).*

It is claimed on behalf of these petitioners that this instruction was erroneous (1) because the deeds referred to were



not invalid even as to the State; and (2) because they were good and valid deeds as to all persons except the State.

As to the first point. After the grant was made by the State in these cases the State did not have even an equitable estate in the land described in the deed. It had no title, legal or equitable, which it could transmit to others. There remained in it only the right to file a bill in equity to set aside the deed.

That such a right does not constitute an equitable interest in land and is not assignable is too well settled to require extended discussion.

*Storg's Eq. Jur.*, sec. 1040.

*Dickinson vs. Seaver*, 44 Mich., 631.

*Sanborn vs. Doc*, 92 Cal., 152.

*Whitney vs. Killery*, 94 Cal., 151.

*Prosser vs. Edmonds*, 1 Younge, &c., 496.

*French vs. Shotwell*, 5 Johns' Ch., 565.

*Graham vs. Railroad Co.*, 102 U. S., 154.

*Crocker vs. Bellanger*, 6 Wis., 667.

3 *Pom. Eq. Jur.*, sec. 1276.

As to the second point. Of the innumerable cases bearing upon the point that deeds such as the court in this instruction told the jury are invalid are absolutely unassailable when the interests of a *bona fide* purchaser are involved we refer the court to some which we think are peculiarly pertinent here.

In *Colorado Coal Company vs. U. S.*, 123 U. S., 307, 314, a bill in equity was filed by the United States to set aside certain land grants that had been made to supposed pre-emptors. The bill charged that there had been no occupation of the land and no improvements thereon, as falsely set out in the pre-emption papers, and further averred that the grantees were fictitious persons and that the papers upon which the grant was obtained were concocted by conspirators, including the register and the receiver of the local land office of the United States.

Referring to the evidence offered by the Government in support of its claim that the grantees were not real persons, the court said:

"Hence it becomes necessary, to support the decree of the circuit court, to maintain as that court declared, that the legal title to the lands in question did not pass from the United States by virtue of the patents, because there were in fact no grantees. And it was that proposition of fact which by the proofs introduced into the cause the United States undertook to establish. The evidence on that point is found in the depositions of fourteen persons examined as witnesses. They were called to prove, and did prove, in the first place, in respect to the several tracts of land in controversy, the facts that they had not been settled upon, and that no improvements had been made upon them by any person. They also testified, in substance, that they were acquainted at the time of the transactions with the lands, and were acquainted with the people then living in Las Animas county, some of them stating that they knew every white man residing at that time therein; that with the exception of one person, named Martine, there were no persons in the county at the time bearing the names specified as pre-emption claimants, and no persons bearing the names subscribed as witnesses to their statements; and that they never saw or heard of persons residing in the county having such names. This is the extent of this description of evidence, the weight of which is to be estimated in connection with the fact that the county of Las Animas, although sparsely settled, embraces an area extending about 150 miles from east to west and about 40 miles from north to south. In corroboration of it testimony was introduced, on behalf of the United States, of experts in handwriting, with a view of establishing, by a comparison of the documents, that they were fabricated, which, however, was met by the opposing opinions of other experts called on the part of the defendants. This evidence we think not only inconclusive, but entitled to no weight, not at all supporting the inference

sought to be drawn that the same handwriting is traceable in the signatures of the various names. The conclusion, if warranted at all, must depend upon the statements of the other witnesses, the substance of whose testimony has already been given, and such presumptions of fact or law as legitimately arise thereon."

In a controversy between one Griffey, who had obtained as a pre-emptor a patent from the United States, on the one hand, and, on the other, a grantee under another patent from the State of Iowa the Supreme Court of the United States said:

"Now, it is claimed that Griffey never complied with the pre-emption laws; that he never made a *bona fide* settlement; that he secured his pre-emption rights by false representations and a pretended settlement; that he does not come into a court of equity with clean hands, and is entitled to no relief, and that, therefore, there was error in entering a decree in favor of the defendants upon the cross-petition. But as we have seen, Griffey did make a settlement, file his declaratory statement and thus initiate a pre-emption right. By these means such pre-emption right had, in the language of the statute, attached. The land, therefore, did not pass under the railroad grant. It was no matter of interest to the company what became of the title. The Government, the owner of the land, was satisfied with what Griffey had done, took from him its land warrant as payment, and patented the land. Into the *bona fides* of this transaction, no one but the Government can inquire."

*Sioux City Land Company vs. Griffey*, 113 U. S., 41.

Where a large number of entries were made under the timber and stone act and it appeared that the applicants filed all their applications for the benefit of a corporation which paid all the purchase money for the applicants (who were its employees), although that act required applicants

under it to make oath that they were not getting the land for the benefit of anybody else, and it appeared that these applicants had fraudulently so sworn in their original applications, it was held that even in a direct proceeding brought by the United States to vacate the patents for this fraud the rights of a *bona fide* purchaser from the corporation of the timber on the land would prevail over the claim of the Government.

*U. S. vs. Detroit Lumber Co.*, 200 U. S., 321.

An application was made to the State land board of Oregon for the purchase of certain State land as swamp lands. A conflicting application was afterward made for the same land as school land. After hearing the parties, the board decided in favor of the first applicant. The Circuit Court of Marion County, Oregon, issued a "writ of review" and, after a hearing, ordered the board to issue a patent to the second applicant. An appeal was taken to the Supreme Court of the State, which reversed the judgment of the circuit court, saying:

"This board was created by the State constitution and by it invested with the power to dispose of these State lands, and its powers and duties are such as are provided by law. It is composed of the Governor, Secretary of State, and State Treasurer, and is a part of the administrative department of the government, and exercises its powers independent of the judiciary department, and its decisions are not subject to be reversed by the court.

\* \* \* \* \*

"This board is not in any sense an inferior court or tribunal over which the circuit courts have a supervisory control, but a co-ordinate department of the State government, whose discretion and decisions the courts can not control."

*Corpe vs. Brooks*, 8 Or., 222.

This case was approved and followed in *Robertson vs. State Land Board*, 42 Oregon, 183, and in *Miller vs. Wat- tier*, 44 Oregon, 347.

In *Turner vs. Donnelly*, 70 Cal., 507, 604, it appeared that a pre-emptor upon lands of the United States had obtained his patent from the Government by falsely swearing that before making his application he had made no assignment of his prospective interest in the land. Nevertheless it was held that his title was good until assailed in a direct proceeding by the United States. And in *Doll vs. Meador*, 16 Cal., 205, and in *Harrington vs. Goldsmith*, 126 Cal., 169, it was held that a patent from the State of California conveying land cannot be attacked collaterally for any fraud or irregularity in the proceedings upon which it was issued.

In a case in the Supreme Court of California, decided in 1896, in which it was sought to affect the title of a purchaser of land which had been acquired from the State because the deed from the State had been issued under a mistake as to the existence of an essential fact, that court said:

"The patent ran to Terry absolutely; it was the highest evidence of transfer from the State of its title; and was also evidence that all the steps prescribed for its issuance had been properly taken (*Heinen vs. Heilbron*, 97 Cal., 101; *Winter vs. Crommelin*, 18 How., 87). The certificate of purchase was assignable (Pol. Code, sec. 3515; Stats., 1867-68, p. 528). The law made it the duty of the register to prepare the patent upon the surrender of the certificate of purchase by the person entitled to the same, and to certify to the Governor that the party named in the prepared patent is entitled to it (Pol. Code, sec. 3519). The patent recited a certificate conforming to said section 3519, stating that the land had been located in accordance with the law, and that Terry was entitled to receive the patent for the same; there is no claim that the patent misrecited such certificates. Certainly, on its face, there appeared no ground to suspect that the register had mistakenly determined that Terry was the legal holder of the certificate of purchase, and of right entitled to the patent. The defendant was not required, as regards the alleged interest of plaintiffs, to peer behind the patent to see whether the register

had not erred or been duped when he made that determination (*Schnee vs. Schnee*, 23 Wis., 377; 99 Am. Dec., 183—a case much resembling the present in several important features)."

In *Frasher vs. O'Connor*, 115 U. S., 102, 111, this court said:

"Before, however, the recall of the township plats, and the order for a new survey, General Rosecrans had procured a number of men to make applications for his benefit for the purchase of the lands in controversy, and to transfer their interests thus acquired to him. The applications were approved by the locating agents of the State, and the lands as selections by the State were afterwards listed to her, and patents were issued to the purchasers or their assignees. According to the findings of the local district court, the application and subsequent proceedings were very loosely conducted, and great irregularities are charged against the principal purchaser. But if the locating agents of the State were satisfied with the applications to purchase, and the selections thus made were approved by the Land Department of the United States, and the lands were listed to the State as part of the grant to her, it is not perceived what ground of complaint the loose character of the proceedings furnish to the defendants. Their title is not advanced by showing how irregularly the proceedings were conducted by parties who obtained the title of the State; and to the General Government it is enough that she does not complain, but accepts the selections in satisfaction of the grant to her. The same view was taken by the Interior Department with reference to one of the State selections referred to. It was objected that the selection was invalid because not made in accordance with the provisions of the act of the legislature of the State, of April 27, 1863. But the Secretary answered that it was not necessary to enter into a consideration of the alleged defects in the application of the purchaser; that was a question between him and the State; that by the seventh section of the act of March 2, 1853, the State was granted indemnity if sections sixteen and thirty-six lay within private

grants; that the manner of selecting such indemnity was not specified; that the act of the legislature had provided for the sale of certain lands belonging to the State, and if purchasers failed to comply with the requirements of the statute, their claims may fail; that the questions to be considered by the General Government were, the right of the State to claim the land under her grant, and was the land subject to selection, observing that these were the only questions to determine, as the General Government only recognized the State in the proceedings; that 'it was no part of its duty to inquire into the transactions between the State and her purchasers, neither would it go back of the record to ascertain whether as between the State and her agent he complied with the provisions of the statute relating to the sale of granted land.' The Secretary added that there was no complaint on the part of the State of any irregularity in the selection in question, but, on the contrary, she had recognized and approved of it and issued a patent to the purchaser."

In *United States vs. Clark*, 200 U. S., 601, this court dismissed a bill filed by the United States to vacate eighty patents for timber lands where the bill averred, and the fact was, that the entrymen had purchased the land from the Government under an agreement by which their title was to inure to the benefit of another.

The bill was dismissed because before it was filed the land had all been conveyed to Clark, who, the court held, was an innocent purchaser.

In *United States vs. Conklin*, 169 Fed. Rep., 177-183, a bill in equity was filed by the United States to set aside a patent granted to Mollie Conklin and others. The patent was issued under the lieu-land provision of the act of March 4, 1897. The bill was demurred to, and the demurrer was sustained by Van Fleet, District Judge.

In substance, the bill alleged that owners of land in a forest reserve had agreed to sell it to John A. Benson; that to carry out this object they signed papers in blank; that the blanks were filled up so as to make of the papers a deed

of relinquishment of the lands to the United States; that at Benson's instance a notary public certified that the grantors had appeared before him and acknowledged the deed; and that this certificate was false.

The court held that it was clear—and the fact was admitted by the United States District Attorney—that the manner in which the deed was executed did not make it a forgery. This being so, it was further held that the Government got a good title and was not in any way defrauded.

Referring to the case of *Hyde vs. Shine*, 199 U. S., 62, the court said:

"3. Nor do I think the latter case is authority for the proposition that it is not necessary to show damage flowing to the plaintiff from the alleged fraud. There a conspiracy was alleged to obtain lands from the Government by exchanging lands obtained from the State in the name of fictitious persons and conveyed by forged instruments. Such instruments would not pass a legal title to the Government, and, therefore, a conspiracy was clearly made out, which would or could work injury. So the remark that the United States Government might set aside the patent 'procured by these fraudulent means' referred to the means alleged in the indictment there being considered, and not such means as are alleged in this bill. The two cases are essentially different in their circumstances.

"Even if the allegations of the bill disclosed a fraud on the grantors, this could not be taken advantage of by them as against the United States, and therefore, the United States was not injured thereby. *Schultz vs. McLean*, 93 Cal., 356; 28 Pac., 1053. I know of no rule that makes fraud against the Government any different from fraud against the individual; and I do not think the Hyde case points to any such distinction. It is quite apparent, therefore, that the bill is lacking in equity; and in this view it is not material to determine whether it was necessary for the bill to allege that the Government had offered to make restitution before bringing suit."



The attention of the court is now invited to a matter of vital importance in this case. Throughout the trial below, and particularly in the instruction now under consideration, the court below proceeded under the impression that in *Hyde vs. Shine*, in 199 U. S., this court had held that the indictment in this case might be sustained by reason only of the charges it contains as to getting school lands from California and Oregon by having persons entitled to acquire such lands make application for them in their own names, but for the benefit of others. But, in truth, as held by the court in the case just cited, all that this court decided in *Hyde vs. Shine* in this connection was that the Government might be held to be defrauded if grants had been made by the States in the names of fictitious persons and forgery resorted to in transferring titles so obtained to the United States, even though, in a proceeding by a State to recover the land it had conveyed, the United States could rely upon its position as an innocent purchaser. The language used by the court in reference to this point must be read in connection with the whole opinion. From beginning to end of what is said in the opinion as to the Government being defrauded the court refers to the charges of the use of fictitious names and forgery. This court has never held that merely because a plan is formed to acquire State lands by having applicants state untruly that they are wanted for their own use the Government can be defrauded if the final object be to trade the State land to the Government.

And it is further submitted that upon the authority of the cases cited as to this assignment of error, including several in this court, and including cases in the Supreme Courts of California and Oregon, no such scheme could properly be called a scheme to defraud the United States, because it would take a perfect and unassailable title. And, this being so, when the court below held that the charges in the indictment as to fictitious names and forgeries must be withdrawn from the jury, the case should have come to an end. But

whether that course should have been pursued or not it seems clear that, with the fictitious names and forgeries out of the case, so far as the indictment is concerned, it was error to tell the jury that the State grants were absolutely invalid if the grantees applied for the land for the benefit of others.

The learned judge who presided at the trial of this case was distinctly told by counsel in objecting to this part of his charge to the jury that the ground of the objection was that titles obtained from the States in the manner referred to in the charge were valid as to all persons except as to the particular State which had given the title and which alone could assail it (850). But the court let the charge on this point stand without qualification and the case went to the jury on the theory that grants of school lands obtained from California or Oregon by applicants who had agreed in advance to assign their titles to others were altogether void, even though the States never questioned them.

But the court went further than this, as will appear from the next assignment of error.

### **The Fourteenth Assignment of Error.**

*Growing out of the refusal of the court to instruct the jury in substance that applications for school lands in California and Oregon were neither false nor fraudulent merely because the applicants did not have personal knowledge as to the character of the land or as to its non-occupancy (806).*

A form of application for school lands used in California will be found on page 221 of the record. A form of the corresponding application used in Oregon will be found on page 233.

It is not charged in the indictment in this case that it was any part of the alleged fraudulent scheme that applicants should be induced to make false statements as to the char-

acter of the school lands or any false statements as to their occupancy.

It is open to serious question therefore whether it was competent for the Government to offer any evidence as to whether the applicants, either in California or in Oregon, had personal knowledge on either of these two points.

The statute of California (165-6) requires an applicant for school lands to make an affidavit "that there is no occupation of such lands adverse to any that he has"; and it also requires that the affidavit must state "whether the land is or is not suitable for cultivation." The statute does not require that this affidavit shall be made from personal knowledge.

The corresponding Oregon statute (167) requires that the applicant for school lands shall make affidavit, among other things, "that there is no valid adverse claim thereto by any actual settler." This statute does not, in terms, require personal knowledge on the part of the applicant.

It would seem to be unreasonable that a resident of California who makes application for his 640 acres of land not fit for cultivation should be required to go in person to the land, which may be 500 miles away, so that he can make oath of his own knowledge that it is not fit for cultivation or that there is no one occupying it adversely.

Moreover, suppose it was an error to think that the States did require every man who was entitled to school land to travel to the land himself so that he could make the affidavit of his own knowledge, could these petitioners be convicted of conspiring to *defraud the United States* by falling into such an error?

This court has often had occasion to hold that penal statutes may not be so construed as to include acts not plainly prohibited. What ordinary man reading section 5440 would suppose that if he made such an error as this in

Hyde *vs.* U. S., No. 447;

As to the Fourteenth Assignment of Error, see *Hoover vs. Salling*, 110 Fed. Rep., 13 (Circuit Court of Appeals for the Seventh Circuit); *Robnett vs. U. S.*, 169 Fed. Rep., 778 (Circuit Court of Appeals for the Ninth Circuit); *Price vs. Beaver*, 73 Cal., 625, and California Statutes for 1909, page

to do that in this case on an indictment that does not even mention such a charge.

20 p. 70  
In this and other ways the authorship of the anonymous letters was a matter which concerned not only Dimond, but the other defendants, and especially Hyde. Indeed, it concerned Hyde if not only the letters themselves, but all the evidence tending to show their authorship, had been confined to evidence relating to Dimond alone, because under the instruction of the court to the jury that it was competent for the jury to convict any one of the defendants the jury after weighing the evidence relating to Hyde and Dimond, might have concluded that, taking the anonymous letters and everything else relating to those two defendants into consideration, they were satisfied that Hyde conspired with Dimond, even if there was not sufficient evidence to prove that Dimond conspired with him.

It must be remembered that in objecting to this part of the charge to the jury counsel explicitly advised the court that the objection was made on the ground that it was for the jury to say whether the authorship of the anonymous letters was of great importance or of any importance and whether the other letters referred to by the court were of more weight in this case than the oral evidence relating to the same subject. That after this statement to the court in the presence and hearing of the jury the court did not qualify what it had said, could only have been understood by the jury as meaning that they *must* give great weight to the anonymous letters if the jury should find that Dimond wrote them and that they *must* give more weight to the correspondence between Hyde and Dimond (523 to 539) than to the testimony of Dimond or of any other witness as to matters covered by the letters.

Thus, the question is presented whether it was error for the court as to these two classes of evidence—letters written by the defendants or some of them, and anonymous letters alleged to have been written by Dimond and connected with

Hyde—to instruct the jury *as matter of law* that one class was entitled to peculiar consideration by the jury, and that the jury could not fail to see how important it was to determine the authorship of the other.

### **Fifteenth and Sixteenth Assignments of Error.**

*As to the language used by the court in the final charge to the jury instructing the jury, first, "that written evidence, letters, for instance, written by parties at the time, is entitled to peculiar consideration as evidence" (830, 851), and, second, that the jury could not fail to see the importance of the question whether the defendant Dimond wrote the anonymous letters in evidence (831, 851).*

While these assignments are argued together on account of their close relationship, it is not intended to indicate that it is the view of counsel for this appellant that they both stand on precisely the same footing.

It may be argued that the reference to the anonymous letters affected only the defendant Dimond. That objection cannot be made to the assignment of error which relates to the instruction that the letters in evidence were entitled to peculiar consideration by the jury.

As to the letters, it is to be observed (830) that the court was referring to correspondence between the defendant Hyde and the defendant Dimond and also to correspondence between the defendant Dimond and Mr. A. B. Browne, of this city.

The correspondence between Hyde and Dimond here referred to will be found in the record on pages 192 to 199, 380 to 383, and 522 to 536.

It will be seen that in that part of this correspondence which occurred in the latter part of 1902 or the early part of 1903 the defendant Hyde, in explaining the difficulties which he would encounter in endeavoring to comply

with a suggestion made to him by the defendant Dimond that he procure affidavits from the applicants for State lands whose titles he had obtained, makes certain statements as to the manner in which he had obtained those lands, indicating especially that he would have difficulty in finding some of the parties and that, if he did find them, they might, when they found what he required, undertake to blackmail him.

On this subject see especially Hyde's letter to Dimond of January 16, 1903, which is on page 193 of the record.

As to the anonymous letters, some of which the court will find in the record at pages 614 to 619, while it is true that originally they were admitted in evidence only as against the defendant Dimond, it appeared from a letter written by Dimond to Browne, dated December 31, 1903 (623), that shortly before that date Dimond had read them, or some of them, to Hyde. And Dimond testified that he had made the demand upon Hyde which is referred to in Dimond's letter to Browne of December 31, 1903 (792, 623).

Those of the anonymous letters which were addressed to and received by Dimond himself intimate that Dimond had knowledge of facts which would be useful to the Government in case Hyde should be prosecuted. The statements contained in this letter of December 31, 1903, from Dimond to Browne would indicate that by exhibiting these letters to Hyde, Dimond expected to obtain from Hyde compensation for services in another matter having no connection with the charges in this case, which up to that time Hyde had declined to give him.

In *McLanahan vs. The Universal Insurance Company*, 1 Pet., 170, 182, this court, through Mr. Justice Story, said:

"It is doubtless within the province of a court, in the exercise of its discretion, to sum up the facts in the case to the jury, and submit them, with the inferences of law deducible therefrom, to the free judgment of the jury. But care should be taken in all such cases to separate the law from the facts, and to leave the latter, in unequivocal terms, to the jury, as their true and peculiar province."

In *Tracy vs. Swartwout*, 10 Pet., 80, which was an action of trover, the court, in instructing the jury, made remarks which it was contended by the plaintiff in error were taken by the jury as a direction to find a verdict for the plaintiff at most for nominal damages. In reversing the case for this error, the court, by Mr. Justice McLean, said, page 95:

"On the part of the defendant it is insisted that the charge of the Circuit Court was on the facts of the case, and was limited to an expression of an opinion on those facts, without any direction as to any matter of law. A court may not only present the facts proved, in their charge to the jury; but give their opinion as to those facts, for the consideration of the jury. But, as the jurors are the triers of facts, such an expression of opinion by the court should be so guarded as to leave the jury free in the exercise of their own judgments. They should be made distinctly to understand, that the instruction was not given as a point of law, by which they were to be governed; but as a mere opinion, as to the facts, and to which they should give no more weight than it was entitled to. And if a fair construction of the charge complained of shall amount to no more than this, it is liable to no valid objection."

In *Nudd vs. Burrows*, 91 U. S., 426, 439, the court sustained the right of a trial judge in a Federal court to comment upon the evidence, saying, however:

"No question of fact must be withdrawn from the determination of those whose functions it is to decide such issues. The line which separates the two provinces must not be overlooked by the court. Care must be taken that the jury is not misled into the belief that they are alike bound by the views expressed upon the evidence and the instructions given as to the law. They must distinctly understand that what is said as to the facts is only advisory, and in no wise intended to fetter the exercise finally of their own independent judgment."

In *Burdell vs. Denig*, 92 U. S., 716, the court reversed the judgment of a Circuit Court of the United States, saying:

"The court, therefore, in telling the jury peremptorily, on this testimony, that the license to Lowe did authorize him to use the Singer machine with a feeding device operating upon the principle and plan of that patented by Wilson, took away from the jury the right to weigh that testimony. If the judge had said, that, *if they believed these facts to be established*, then the license to Lowe authorized the use of the Wilson device in the Singer machine, we would affirm the judgment: but because he, in this respect, assumed a function which belonged to the jury, and for that reason alone, the judgment must be reversed and a new trial awarded."

In *Hicks vs. U. S.*, 150 U. S., 442—a case in which the plaintiff in error had been convicted of murder in the Circuit Court of the United States—the judgment was reversed because the trial judge had undertaken to instruct the jury as to the weight to be given to certain evidence in the case. After quoting the paragraph of the charge, the court said:

"The learned judge therein suggests to the jury that there was or might be a 'conflict as to material facts between the statements of the accused and the statements of the other witnesses who are telling the truth,' and that 'then you would have a contradiction that would weigh against the statements of the defendant as coming from such witnesses.' The obvious objection to this suggestion is in its assumption that the other witnesses, whose statements contradicted those of the accused, were 'telling the truth.'"

In *Starr vs. U. S.*, 153 U. S., 614—a capital case—the court, in awarding a new trial because of language used in the trial judge's charge to the jury in which the court sought to control the jury on questions of fact, after saying that in the Federal courts the presiding judge, even in a criminal case, in summing up the facts to the jury, may express his own opinion, added:



"But he should take care to separate the law from the facts and to leave the latter in unequivocal terms to the judgment of the jury as their true and peculiar province. As the jurors are the triers of facts, expressions of opinion by the court should be so guarded as to leave the jury free in the exercise of their own judgments. They should be made distinctly to understand that the instruction is not given as to a point of law by which they are to be governed, but as a mere opinion as to the facts to which they should give no more weight than it was entitled to."

In *Smith vs. U. S.*, 161 U. S., 85—a capital case—the accused had offered testimony of several witnesses as to the general reputation of the deceased as a quarrelsome and dangerous person. The trial judge charged the jury if it found that this testimony was given by keepers of dives and gambling hells, and violators of law, and prison convicts to cast it aside as so much worthless matter, invoked wrongfully in cases of this character. In reversing the judgment of conviction and awarding a new trial for this error the court, through Mr. Justice Gray, said (page 90):

"No doubt has been suggested as to the competency of any of the witnesses in question; and their credibility was a matter to be determined by the jury. The judge having, in effect, peremptorily withdrawn this matter from their consideration, the defendant is entitled to a new trial."

In *Brown vs. U. S.*, 164 U. S., 221—another capital case—a verdict of guilty was set aside because of certain comments made by the trial judge in his charge to the jury concerning the testimony offered by the accused as to his good reputation for truth and veracity. The court said:

"Evidence of the reputation of a man for truth and veracity in the neighborhood of his home is equally competent to affect his credibility as a witness, whether it is founded upon dispassioned judg-

ment, or upon warm admiration for constant truthfulness, or natural indignation at habitual falsehood; and whether his neighbors are virtuous or immoral in their own lives. Such considerations may affect the weight, but do not touch the competency, of the evidence offered to impeach or to support his testimony."

In *Metropolitan R. Co. vs. Martin*, 15 App. D. C. 552, which was an action for personal injuries, the conductor of a car which caused the injury testified that shortly after the accident the plaintiff made a certain statement. The plaintiff as a witness in her own behalf denied that she made such a statement. In his charge to the jury the trial judge, referring to this contradiction, said:

"Now, as between these two, I tell you, gentlemen, if you deem it of any importance in this case, that according to the principle of law you are justified in believing, other things being equal, that she did say it, rather than that she did not say it." \* \* \*  
 "But if the attempt was made to show that what she said was not true, then I say, the presumption is rather that she said it than that she did not say it, when the only witnesses were these two people."

For this error alone the judgment against the railroad company was set aside, the court agreeing that it did not help the case at all that it was left to the jury to determine whether the circumstances of the alleged conversation were of any importance in the case.

The cases in other jurisdictions are equally clear and practically of one mind in holding that the court must keep its hands off when the *weight* of evidence is involved.

In the recent case of *State vs. Gleim*, 17 Mont., 17; 31 L. R. A., 294-7, it was said that the court should not instruct the jury as to what weight should be given to any portion of the testimony. Accordingly it was held error to tell the jury that if certain admissions of the defendant were clearly made and correctly repeated, they were entitled to great weight.

In *Bradley vs. Gorham*, 77 Conn., 211; 66 L. R. A., 74, the trial court told the jury that evidence of contradictory statements out of court were entitled to little weight as against statements by the same person in court.

This was held to be reversible error, the court saying that it was "an unwarrantable invasion of their [the jury's] peculiar province."

In *Post vs. United States*, 135 Fed. Rep., 1, which was a case in the Circuit Court of Appeals for the Fifth Circuit, the conviction of a so-called "mental healer" was reversed because the court told the jury that they might ignore the testimony of the defendant to the effect that she could cure by emanations of her mind disseminated through a second person to a third. The opinion in this case is instructive and valuable.

In *State vs. McCollough*, 114 Iowa, 532; 55 L. R. A., 378, the trial judge suggested to the jury that the evidence of certain medical experts as to the sanity of the defendant might not be entitled to much weight. The Supreme Court of Iowa held this to be error. To do so, it had to sustain an exception to language quoted by the trial court from an earlier opinion of the Supreme Court itself. The appellate tribunal on this subject said:

"Many things may be properly said in an opinion which in the same form could not be approved as part of a charge to a jury."

In *State vs. Willing*, 129 Iowa, 72, the court said:

"In this connection we may also say that the court, instructing the jury upon the matter of alleged admissions by the defendant, said to them that if such admissions were shown to have been understandingly made, and to have been correctly remembered by the witnesses, and substantially repeated by them on the witness stand, they were 'entitled to great weight.' In so doing we think the court inadvertently trenched upon the domain of the jury. The admissibility in

evidence of any given fact or circumstance having been determined by the court, it is for the jury alone to determine whether it shall be given great or little weight. *State vs. Crofford*, 121 Iowa, 395; *Steele vs. State*, 83 Ala., 20 (3 South. Rep., 547); *People vs. Ah Sing*, 59 Cal., 400; *Boyer vs. State*, 93 Tenn., 216 (23 S. W. Rep., 971.) The farthest we think this court has gone in the direction of the instruction here in question is to approve an instruction embodying the proposition of Greenleaf (volume 1, section 200) that admissions, though generally to be received and considered with caution, yet, when clearly identified and proved, 'are often the most satisfactory evidence.' *Martin vs. Algona*, 40 Iowa, 390. This statement goes to the border line between the province of the court and the province of the jury, and we are not willing to enlarge the rule to the extent required for an approval of the instruction given by the court. Our attention is called to no precedent among our cases for thus determining the weight of evidence as a matter of law, and we are not disposed to establish one."

In *Nelson vs. McLellan*, 31 Wash., 208; 60 L. R. A., 793, a suit had been brought for negligence resulting in a boy losing his eye by the explosion of dynamite. The court instructed the jury that, while the testimony of experts was competent and entitled to such weight as the jury might give it, it was "not as good evidence as the testimony of a credible witness or witnesses who testify to having seen the fact itself occur."

This was held to be reversible error, the appellate court saying:

"The jury is the sole judge of the weight of such testimony."

In *Nelson vs. Force*, 55 Ind., 455, it was held error for the trial court to say to the jury that the testimony of relatives of the parties to the suit was not entitled to as much weight as the testimony of disinterested witnesses.

In *Fulwider vs. Ingels*, 87 Ind., 414, 420, which was a case involving the sanity of the grantor in a deed, the trial court instructed the jury that the opinion of witnesses who were familiarly acquainted with an alleged insane person is ordinarily entitled to greater weight than that of witnesses of equal capacity whose opportunities of forming an opinion were more limited.

It was held that this was an intrusion of the court into the province of the jury.

In the opinion, cases are cited from the Indiana reports where judgments were reversed because the jury was instructed that, other things being equal, oral testimony is entitled to greater weight than depositions; that "one interested will not, usually, be as honest and candid as one not so;" that, if a witness is interested in the result of a prosecution, it tends to discredit him; and that the evidence of parties and those related to them is not entitled to as much weight as the evidence of disinterested witnesses.

In *State vs. Fisk*, 170 Ind., 166, the court said to the jury, in substance, that testimony at the trial as to oral statements made long before should be received by the jury with caution. This instruction related to evidence in favor of the accused, who was acquitted. On appeal by the State the judgment was reversed on the ground that this was an intrusion by the court into the province of the jury.

In *State vs. Musgrave*, 43 W. Va., 672, 676, it was held reversible error for the trial court to say to the jury that evidence should not be discredited because it is circumstantial. The appellate tribunal, after saying that as there was only circumstantial evidence in the case the court could but regard it as an instruction on the weight of the evidence, added:

"And, again, when the court tells the jury that: 'Such evidence is often more reliable than the direct testimony of eyewitnesses, when it points irresistibly and conclusively to the commission by the accused of the crime; a verdict of guilty in such cases may

rest upon a surer basis than when rendered upon the testimony of eyewitnesses, whose memory must be relied upon, and whose passions and prejudices may have influenced them'—can we say otherwise than that the court, in so instructing the jury, was instructing them upon the weight and effect of the only character of evidence that was before them? The court surely, when it says that such testimony is more reliable, and that a verdict of guilty may rest upon a surer basis than when rendered upon the testimony of eyewitnesses, was speaking of the weight of the evidence."

In *Ryder vs. State*, 100 Ga., 533-4, the court said:

"Where the defense of insanity is relied on, and there is evidence of expert and non-expert witnesses who testify as to the sanity of the accused and who were 'parties who associated with the defendant, lived with him, lived in the same community,' it was error for the judge to charge the jury that the testimony of expert witnesses was entitled to great weight, and to add, in substance, that the testimony of intimate associates of the accused should be given similar weight. All this testimony is allowed for the purpose of informing the jury as to the truth of the issue, and the weight to be given to it is for them. The judge should not intimate in any way to them how they should deal with any particular class of witnesses, but under proper instructions leave the entire matter to them. It may be that in certain cases the testimony of non-expert witnesses would, in the mind of an intelligent juror, outweigh the testimony of the alleged expert witnesses, and that in other cases the testimony of the expert would be given the greater weight; but the jury are the sole judges of such things, and the judge should leave them untrammelled to pass upon the credibility of all witnesses, and give such weight to the testimony of each as they see proper."

In *Merritt vs. State*, 107 Ga., 675, 679, the defendant was charged with assault with intent to rape, and there was tes-

timony of physicians, as experts, as to the chastity of the prosecutrix. Referring to that evidence, the court said to the jury:

"The value of that testimony is dependent upon the degree of the experience and honesty and impartiality of the witnesses who testified, and its weight varies in proportion as they are experienced, honest and impartial. Where these elements are undoubted, their testimony is entitled to great weight and consideration; but, gentlemen, it is not so binding, not so authoritative, that you are bound by it."

For this, a conviction was set aside, the court remarking that "in a close case as this was" it was manifestly error to call the jury's special attention to this testimony and tell them it should be given great weight.

In *Knapp vs. State*, 25 Ohio Circuit Court, 571, the trial court, in charging the jury concerning an alleged confession made by the defendant, said:

"Sane men who are innocent, as a rule, do not make confession of crime."

In holding this to be error, the appellate court said:

"We do not understand this to be a rule of law, that a judge may charge a jury; but we take it, rather, that the judge is telling the jury what his experience of the actions of men is; and in that respect he usurped the power of the jury. It is not for the court to say to the jury what his experience of men in certain matters is; that is the exclusive province of the jury; it is their experience of the conduct and actions of men that is to be applied to the case, and not that of the court."

In *State vs. Tuttle*, 67 Ohio Ct., 440, the trial court instructed the jury that they should "scan with caution and view with suspicion" the testimony of certain female witnesses who had admitted that they had lived a vicious life. In sustaining an exception to this instruction, the Supreme Court of Ohio said:

"In deciding questions of fact before them, courts may often use their own experience and observations in weighing the testimony of witnesses having certain well-known traits and defects of character, but they may not impose that experience on a jury as its guide in determining the credibility of witnesses."

The foregoing are submitted merely as illustrations, very closely fitting the present case, of the rule that the court must not in any degree trench upon the province of the jury as to the weight of any evidence which the court has admitted as competent for the consideration of the jury.

The right to trial by jury will be of little value when it is established that the court has the right to pick out certain portions of a mass of evidence and tell the jury that the law requires them to give it much or little weight.

### **The Seventeenth Assignment of Error.**

*As to the action of the court in refusing to permit the examination of jurors for the purpose of showing that their verdict was the result of a bargain brought about by what, under the circumstances, amounted to coercion by the court (140, 150, 153-4-8).*

At the beginning of the trial the court ordered that during the trial the jury should be kept in the custody of the marshal and his deputies (143, 145, 163).

The trial lasted from the 3d day of April, 1908, to the 22d day of June, 1908 (143, 146).

The jury, after hearing the final arguments and receiving their instructions from the court as to the law, retired to consider of their verdict on Friday, June 19, 1908 (854). After being out three days and three nights they came into court and reported that they were unable to agree. The court thereupon asked them to make another effort to agree, and told them if they could not "conscientiously and freely agree upon a verdict" they would be discharged. More than



three hours later, on the same day, they were again brought into court, and the foreman told the court that they were unable to agree. The court—"after consultation with counsel"—sent them out again, and at once they came back with a verdict convicting Hyde and Schneider and acquitting Benson and Dimond.

It is perfectly evident on the face of this record that whatever caused this remarkable verdict, it was not brought about by a consideration of the evidence. In each of the last eight counts of the indictment the overt act charged is a payment of money to Harlan or to Valk by Benson. They testified that their agreement was with Benson; that the services rendered were rendered to Benson; and that the money they received was paid to them by Benson (331, 357). There is not a particle of evidence in the case tending to show that any of the other defendants authorized these payments or knew before the indictment was found that any such relations existed between Benson on the one hand and Harlan and Valk on the other. Benson himself, although he was a witness in the case in his own behalf, did not deny that he had made an agreement with Harlan and Valk as testified to by them, and did not deny that he had paid them the money they testified that he had paid them. On the contrary, after Valk had testified that on a certain occasion he had received from Benson four \$20 bills and two \$10 bills, certain bills were exhibited to him by the District Attorney and he was asked to examine the money and to state whether or not he had seen it before. Thereupon Benson's counsel said:

"Mr. District Attorney, I admit that that is the money, and I admit that Mr. Benson gave it to him" (363).

Notwithstanding all this, the jury found Hyde and Schneider guilty under the counts referred to, and found the defendant Benson not guilty.

A motion for a new trial was duly filed by each of the convicted defendants; paragraph 9 of the motions referring to the coercion of the jury by their long confinement, and

paragraph 10 setting up that the verdict was the result of an agreement between certain of the jurors in favor of acquitting all the defendants and others of the jurors who were in favor of convicting them all to "split the difference" by convicting two and acquitting two (148, 151).

Within a half an hour before the time allowed by the rules of the court for the filing of a motion for a new trial had expired and after the two convicted defendants had left the District to go to their respective homes, their counsel learned for the first time of the agreement referred to in paragraph 10 of the motions for a new trial, and they immediately filed those motions and their respective affidavits in support of the averments of that paragraph (149, 151).

At this stage of the case the court postponed proceedings in the case until October. On October 27 counsel for Hyle and Schneider, respectively, moved the court for leave to examine the jurors or some of them under oath as to the matters referred to in paragraphs 9 and 10 of the motion for a new trial, but the court refused to allow such examination. The opinion of the learned judge who presided at the trial and acted upon the motion for a new trial is to be found in the record on pages 155 to 158.

It may not perhaps be successfully contended that the trial judge in this case did not have the right to have the jury confined during the trial, even though that amounted to an indefinite sentence of imprisonment, which turned out to be a term of over two and a half months. And it is conceded that ordinarily this court will not review the action of the lower court in overruling a motion for a new trial. But it is insisted that where the action of the lower court which is involved in a motion for a new trial is so clearly unjust and oppressive that it amounts to an abuse of the court's discretion this court has the power, and should exercise it, of setting aside the order and itself directing that a new trial should be granted. And there is no doubt that, so far as the action of the court below in refusing to allow the jurors to be examined is concerned, that action is reviewable here as a

matter of right. That question is concluded by the case of *Mattox vs. U. S.*, 146 U. S., 140, in which case the court stated that it would be compelled to reverse the judgment of conviction because affidavits of jurors as to the reading of newspapers in the jury room were excluded by the lower court on the hearing of a motion for a new trial, but that another ground existed upon which the court must not only reverse the judgment, but direct the granting of a new trial.

In *United States vs. Reid*, 12 How., 366, there was a motion for a new trial in a criminal case based in part upon the affidavits of two of the jurors, in which they stated that a newspaper containing an account of the trial had been read by them in the jury room pending consideration by the jury of the verdict. On the question whether these affidavits should have been received the court, by Mr. Chief Justice Taney, said:

"It would perhaps hardly be safe to lay down any general rule upon the subject. Unquestionably, such evidence ought always to be received with great caution. But cases might arise in which it would be impossible to refuse them without violating the plainest principles of justice. It is, however, unnecessary to lay down any rule in this case, or examine the decisions referred to in the argument. Because we are of opinion that the facts proved by the jurors, if proved by unquestioned testimony, would be no ground for a new trial. There was nothing in the newspapers calculated to influence their decision, and both of them swear that these papers had not the slightest influence on their verdict."

In *Bucklin vs. United States*, 159 U. S., 682, three defendants were separately indicted for perjury in the same transaction. The indictments were consolidated and tried together. At the close of the evidence the jury retired to consider of their verdict. After being out three days the jury asked the court whether they could find a verdict as to some of the parties and disagree as to the others. The court

said they could not; that they could only find the defendants all guilty or all not guilty, or some guilty and some not guilty. They then convicted Bucklin and acquitted his codefendants. This was held to be such error as entitled Bucklin to a new trial. The court said:

"The jurors had been deliberating for three days without returning a verdict as to either of the defendants, when they were instructed that their duty was either to find each defendant not guilty, or each guilty, or some guilty and the others not guilty. If some of the jurors wavered in their minds as to the guilt of all the defendants—and the delay in returning the verdict justifies the belief that such was the fact—it may be that the instruction of which complaint is made worked injury to the plaintiff in error. We cannot say it did not. To say that the court would not receive from the jury a report of a disagreement as to one defendant was, in effect, to announce that the jurors would be held together until the court should deem it to be its duty to discharge them finally, and would not be discharged unless or until they returned a verdict of guilty or not guilty. This tended to coerce the jury into making a verdict."

In a controversy as to the validity of a will the jury returned a verdict finding the paper in controversy to be the last will of the testator so far as it made provision for certain legatees and not to be his last will so far as it made provision for another legatee and her children. After the jury had been out some time and reported that they were unable to agree the court reminded them that it was the third trial of the case, and told them, among other things, that they must decide it.

In setting aside the verdict because the trial judge went too far in trying to get the jury to agree, the Court of Appeals of Kentucky said:

*"And as the actual finding shows evidence of a compromise of opinion, and yielding by some of*

the jury of their previously announced unalterable conviction, we think the verdict cannot be regarded as the result of deliberate judgment, but was brought about by the supposed paramount duty of the jury to agree upon a verdict rather than by free and unbiased conviction of what their verdict ought to be; and whenever the interference of the court appears to have had such effect upon the jury, their verdict ought to be set aside."

So, in this case, the absurd disposition made by the jury of counts 35 to 42 of the indictment demonstrates of itself, without any aid from affidavits of jurors, that to escape from their confinement which had lasted so long the jury had decided to abandon any effort to reach an agreement based upon the evidence and to find some other road to liberty.

In *Brown vs. State*, 127 Wis., 193, the defendant was convicted of rape. After the jury retired they were confined in a small room, and two of their number, who were the only ones in favor of a verdict of acquittal, were made ill by the others smoking. The jury retired about 5.30 o'clock in the afternoon. About 10.30 that night the officer in charge of the jury told them that the judge was about to go to his hotel for the night, so that they would be locked up for the night unless they agreed very soon. Thereupon a verdict of guilty was rendered.

A motion for a new trial was made, supported by the affidavits of the two jurors that they were induced to join in the verdict by the statements of the officers and their fear of serious illness if they should have to spend the night in the vitiated atmosphere of the jury-room. In setting aside the verdict, the Supreme Court of Wisconsin, as to this point, said:

"Was there improper influence exerted upon the jury? The rule has become fully settled in Wisconsin that a verdict cannot stand when the jury have been subjected to any statements or directions nat-

usually tending to coerce or threaten them to agreement either way, or to agreement at all, unless it be clearly shown that no influence was thereby exerted. *Roman vs. State*, 41 Wis., 312; *McBean vs. State*, 83 Wis., 206; 53 N. W., 497; *Hodges vs. O'Brien*, 113 Wis., 97; 88 N. W., 901; *Secor vs. State*, 118 Wis., 621, 637; 95 N. W., 942; *Koch vs. State*, 126 Wis., 470; 106 N. W., 531. It has been said that reasonable ground to suspect such influence suffices. *Roman vs. State*, *supra*. Presumption of prejudicial effect arises in absence of clear proof to the contrary. *Keenan vs. State*, 8 Wis., 132; *State vs. Dolling*, 37 Wis., 396; *Peppercorn vs. Black River Falls*, 89 Wis., 38, 41; 61 N. W., 79; *Hempton vs. State*, 111 Wis., 127, 147; 86 N. W., 596. It is even stronger in case of improper statements by an officer than if by the trial judge. *Hempton vs. State*, 111 Wis., 127, 149; 86 N. W., 596. Whether testimony of jurors as to their own mental processes, either in support or denial of the effect of statements or conduct, can be received at all, may well be doubted (*Hempton vs. State*, *supra*; *Wolfgang vs. Schoepke*, 123 Wis., 49, 24; 100 N. W., 1054; *Woodward vs. Leavitt*, 107 Mass., 453, 466), but is not important here, for there is none offered to negative effect upon some of the jurors, and the direct evidence of the two jurors as to their mental processes or reasons may be disregarded in view of the presumptions above stated. Such affidavits were admissible to prove the physical conditions and the statement of the officer. *McBean vs. State*, 83 Wis., 206, 210; 53 N. W., 497; *Hempton vs. State*, *supra*; *Woodward vs. Leavitt*, *supra*. In view of the conditions under which the jurymen were suffering, it is unquestionable that the officer's warning that they would be locked up for the night unless they agreed very soon was both threatening and coercive, and naturally tended to induce the surrender of their opinions. While jurymen, in performance of the high civic function entrusted to them, ought to adhere to their deliberate and conscientious convictions notwithstanding personal inconvenience or suffering, it is not the policy of the law that rights of litigants, especially those charged

with crime, shall be made dependent on the existence of such Spartan devotion to duty. We cannot avoid the conclusion that the verdict before us was fully proved to have been rendered under such threats and coercion that it should have been set aside."

This case is valuable as showing that the mere fact that an affidavit of a juror includes inadmissible statements as to the operations of his own mind does not prevent the use for the purposes of a motion for a new trial of other parts of the affidavit which are unobjectionable. In overruling the motion in this case for leave to examine the jurors Mr. Justice Stafford said that to attempt to support the motions by the testimony of a juror would require asking him what was his judgment and opinion on the evidence. It is true that in the necessarily hasty preparation of the affidavits of counsel reference was made to the conflicting judgment and opinions of the jurors, but the jurors could have been examined as to the other allegations of the affidavits of counsel without asking any of them what was his opinion or judgment in the matter. The forced agreement to escape further confinement by convicting two and acquitting two without reference to the evidence was the substantial ground of the motions. The court should have allowed that to be proved.

In *Thomas vs. Chapman*, 45 Barb., 98, there was a motion to set aside a verdict based upon the affidavits of two of the jurors that the officer having them in charge after they had retired said to them that the case was clear for the plaintiff, and that the jury had better agree and go home; otherwise, they would be locked up for the night. The two jurors further said they never would have agreed to the verdict but for the fear of being locked up for the night.

In granting the motion, Sutherland, judge, held that so much of the affidavits as stated the effect of the officer's remarks upon their minds was probably inadmissible for that purpose, but that it was not necessary for the losing party to show that the verdict was in fact influenced by the officer's statements.

Here, again the court distinguished between what was admissible and what was inadmissible in a juror's affidavit. It did not exclude competent evidence merely because incompetent evidence was also offered.

In *Sargent vs. —*, 5 Cowen, 106, on full consideration it was held that affidavits of jurors were properly received to show that the verdict was reached by allowing the plaintiff damages upon a plainly erroneous principle. The action was by a mother (a widow) for damages for the seduction of her daughter, and the affidavits showed that the jury had given not only proper damages, but that they had given in addition \$900 as the estimated expense of raising the child which the daughter had borne. For this misconduct of the jury, and for another reason, the verdict was set aside.

In *State vs. Bybee*, 17 Kas., 462, the charge was assault with intent to kill. The evidence for the state showed clearly an attempt to murder. The evidence for the defendant, if believed, proved an alibi.

After the jury had been out "several hours" they were brought into court, and in answer to an inquiry by the presiding judge they said they had not agreed. Thereupon the court addressed them at some length, urging them to agree, concluding by saying:

"I warn you not to think of being discharged for some time to come."

The jury then convicted the defendant of an assault only.

In reversing the judgment because of practical coercion of the jury the Supreme Court of Kansas, through Brewer, Judge, said:

"A verdict is the expression of the concurrence of individual judgments, rather than the product of mixed thoughts. It is not the theory of jury trials, that the individual conclusions of the jurors should be added up, the sum divided by twelve, and the quotient declared the verdict, but that from the testi-



mony each individual juror should be led to the same conclusion; and this unanimous conclusion of twelve different minds, is the certainty of fact sought in the law. Especially is this true in criminal trials. Here should no thought of compromise be tolerated. Before the State can fairly demand the conviction and punishment of an alleged criminal, the twelve jurors should each be led from the testimony to a clear conviction of his guilt; *and where six jurors believe a defendant guilty of murder, and six believe him innocent of any offense, it is an outrage for the twelve to bring in a compromise verdict of guilty of manslaughter. We fear that something of this kind occurred in this case, and that the charge above quoted was mainly instrumental in producing this result.*"

In a capital case in which the jury found a verdict of guilty, after being out four nights and after being brought into court several times and urged by the court to agree, the verdict was set aside by the Court of Appeals of New York on the ground that it was coerced. Just before they agreed the court had intimated to them they might be kept out indefinitely if they did not agree. In delivering the opinion to the Court of Appeals, Parker, Ch. J., reviews the cases and refers especially to Judge Brewer's opinion in *State vs. Lybee*, *supra*. In concluding the opinion Judge Parker said:

"From the remarks of the courts, and the treatment they had received, they had every reason to believe that a still longer confinement on chairs and hard benches was in store for them, a physical strain such as only strong men could stand. If one or more members of the jury surrendered their convictions to put an end to the punishment they were undergoing, and with an indefinite continuance of which they were all threatened, it is not to be wondered at. Only very strong characters could have longer resisted the importunities of associates and the appeal of their own exhausted bodies for relief from the strain to which they had been so long subjected.

"Enough has been said to call attention to some of the reasons which have led us to the conclusion that the agreement of this jury should be regarded as coerced. A verdict thus obtained ought not to be allowed to stand in any case, and least of all, in one involving a human life."

*People vs. Sheldon*, 156 N. Y., 268, 285.

There was a very satisfactory review of the cases on this subject in *State vs. Chambers*, 9 Idaho, 673. In that case the jury was brought into court several times (within, apparently, 24 hours) and admonished by the court that it was their duty to agree. In the course of the opinion of the appellate court setting aside a verdict of guilty the court said:

"After the jury have returned into court and informed the court that they cannot agree in such a case, it is evident that some of them are for conviction and others for acquittal. They must also know, as men of common understanding, that it was the duty of the trial judge to advise them to acquit if he did not think the evidence sufficient to warrant a conviction, and when he did not so instruct them and yet told them that it was a simple matter about which there should be no difficulty or dispute, it must have been apparent at once that the court was of the opinion that there should be no difficulty in convicting the defendant. We do not think it is proper for the trial judge to advise a jury; after they have announced that they cannot agree, that it is their duty to yield up their personal views and not to have too much pride in their individual opinions. Such advice, if given along with the general instructions to the jury prior to their retiring to deliberate upon the matter, would not have the same effect as it must necessarily have after the jury have returned and reported that they cannot agree, for the reason that when the instructions are first given the jury have not yet heard the law in the case, and are not presumed to have formed any definite or fixed opinion as to the guilt or innocence of the defendant, but it is certain when they report that they can-

not agree, that they have all formed quite fixed and definite opinions on the matter. The court erred in the course of his discussion with the jury upon their repeated returns into court; and while we are not inclined to single out any particular expression, which, standing alone, we should say is cause of reversal, taking the whole of these remarks together and the circumstances and conditions as illustrated by this record, we have no doubt of its effect upon the jury. It is safe to say with reasonable certainty, that this particular jury would never have returned a verdict in the case except for the repeated admonitions given them by the court."

In none of the cases above cited was the fact of coercion so plain as it is here. For eleven weeks these men had been kept from their families and their business listening to the witnesses, the counsel, and the court. For three days and three nights longer they had wrestled with the great mass of evidence submitted to them. At the end of that time they came into court and reported that they could not agree. The court sent them out again, stating then that if they could not conscientiously and freely agree they would be discharged (854). From 11:30 in the morning until nearly 3 o'clock in the afternoon of that day they struggled again with the evidence. At the end of that time they returned to the court-room and informed the court that they could not "conscientiously and freely agree." They supposed, of course, that they would then be allowed to go home, but the court, instead of discharging them, directed them to go over each of the forty-two counts of the indictment as to Hyde, then to do the same as to Benson, and so on with the other two defendants. This necessarily meant another night's imprisonment at least. Then they gave up and *in a few minutes* reported what is manifestly a compromise verdict—one that could not by any possibility have been based on the evidence.

Here the court is reminded of the language used by it in *Burton vs. U. S.*, 196 U. S., 283, 307. The jury in that

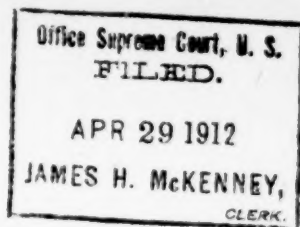
case had been brought back to the court-room after being out some time. The court repeated some of the instructions which had been given to the jury before they retired, but declined to repeat others. This court on that subject said:

*"Balanced as the case was in the minds of some of the jurors, doubts existing as to the defendant's guilt in the mind of at least one, it was a case where the most extreme care and caution were necessary in order that the legal rights of the defendant should be preserved. Considering the attitude of the case as it existed when the jury returned into court for further instructions, we think the defendant was entitled, as matter of legal right, to the charge asked for in regard to the previous requests to charge, which had been granted by the court under the circumstances stated, and it was not a matter of discretion whether the jury should, or should not, be charged as to the character of those requests. A slight thing may have turned the balance against the accused under the circumstances shown by the record, and he ought not to have longer remained burdened with the characterization of his requests to charge, made by the court, and when he asked for the assertion by the court of the materiality and validity of those requests which had already been made, the court ought to have granted the request."*

It is submitted that the judgment and verdict in this case should be reversed if for no other reason because it is apparent on the record as it stands that this ridiculously inconsistent verdict upon which the judgment is based was a coerced verdict. But, if this court does not agree with us in that conclusion, it is submitted that the judgment should be vacated and the court below directed to allow an examination of the jurors in order that it may be determined by that examination whether the jurors were coerced into rendering the verdict they did and whether the verdict was the result of the agreement referred to in the motion for a new trial and the affidavit in support thereof.

A. S. WORTHINGTON,

*Attorney for Petitioners.*



**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1911.

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**No. 447.**

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FREDERICK A. HYDE AND JOOST H. SCHNEIDER,  
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*v.s.*

THE UNITED STATES OF AMERICA.

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**ADDITIONAL BRIEF FOR THE PETITIONERS.**

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**Points Suggested by Reading "Substitute Brief" for  
the United States.**

In his substitute brief (5) the learned Solicitor General states that there is no assignment of errors in the record in this case except as is disclosed in the opinion of the Court of Appeals. This mistake is remarkable, inasmuch as when this case was orally argued there was before the court, and there is now in the hands of the court and of counsel for the Government, an original and a supplemental brief on behalf of the petitioners—the original brief setting forth

eight assignments of error relating to the questions of venue and the statute of limitations, and the supplemental brief setting forth nine assignments of error growing out of other rulings of the court at the trial, or seventeen in all. Of the thirty-eight assignments of error referred to in the opinion of the Court of Appeals and in the substitute brief for the Government more than half are not relied upon here at all. The court will therefore find no relation whatever between the assignments of error as numbered and referred to in the substitute brief for the Government and as actually presented by counsel for the petitioners in the assignments of error in this court.

### **The Jurisdiction of the Supreme Court of the District of Columbia.**

This question arises not under the fourth, fifth, and sixth assignments of error, as stated on page 14 of the substitute brief for the Government, but under the first, second, third, and fourth assignments of error. Those assignments and the important question which they involve are discussed on pages 22 to 65 of the original brief for the petitioners.

At the outset of the argument for the Government on this point contained in the substitute brief it is said (14) that "it must be conceded that the conspiracy was originally formed not in the District of Columbia but in the State of California." But it is urged on behalf of the Government at great length that the crime made punishable by section 5440 consists not of the conspiracy alone, but of the conspiracy and the overt act. This contention is in the teeth of the construction of that section as fixed by this court nearly thirty years ago and continuously maintained by it from that day down to the present time. The question was squarely presented in 1883 in *U. S. vs. Britton*, 108 U. S., 199, 204. The indictment in that case charged a conspiracy to defraud the United States and the commission of certain



overt acts to effect the object of the conspiracy. It was maintained with great force on behalf of the Government in that case that, taking into consideration what was charged in the several counts of the indictment as to the nature of the conspiracy and as to the overt acts, a case was presented in which there was a good charge of an offense under section 5440, but the court unanimously held that the allegations of the indictment relating to the overt acts could not be considered at all in determining whether an offense under section 5440 was charged, and this on the ground that the offense "does not consist of both the conspiracy and the acts done to effect the objects of the conspiracy, *but of the conspiracy alone.*" Language could not be plainer, but if anything further is required it is to be found in the fact that the court in support of its conclusion relies upon *Regina vs. King*, 7 Q. B., 782, and *Com. vs. Shedd*, 7 Cush., 514, in which cases it was also expressly decided by the Court of Exchequer Chamber in England and by the Supreme Judicial Court of Massachusetts that overt acts are no part of the offense of conspiracy and may be disregarded if alleged.

The Britton case is, therefore, an explicit determination by this court of the fact that under section 5440 the crime consists of the conspiracy and nothing else; that the requirement of overt acts does not add anything to the definition of the offense, but merely provides that the criminal intent of the parties concerned in the unlawful agreement shall not be punishable so long as they do nothing to carry that intent into effect. *U. S. vs. Britton* was approved on this point in 1893 in *Pettibone vs. U. S.*, 148 U. S., 197, 202.

In *Dealy vs. U. S.*, 152 U. S., 539, 546 (decided in 1894), the same question came up in a different form. That, too, was an indictment under section 5440 for a conspiracy to defraud the United States. It was objected to the indictment that it did not charge that any of the overt acts relied upon were committed within the limits of the United States. The

indictment did not in fact state where the overt acts were committed, but the court held that this was immaterial, because if the conspiracy itself was entered into within the limits of the United States and the jurisdiction of the court *the crime was then complete*.

If anything is settled in the criminal law it is that no indictment can be sustained which does not state both the time and the place of the crime charged in the indictment. There is probably not a prosecuting officer in the United States who would seriously urge that an indictment could be sustained which charged the crime of burglary or larceny or any other offense which did not contain the averment that the crime was committed within the jurisdiction of the court in which the indictment was found. The fact that this court sustained the indictment in *Dealy vs. U. S.* is another direct and positive adjudication that the overt act is no part of the offense made punishable by section 5440.

In *Bannon vs. Mulkey*, 156 U. S., 464, 468-9 (decided in 1895), an indictment under section 5440 was objected to on behalf of one of the defendants because there was no averment that he had participated in any way in any of the overt acts which were charged to have been committed in furtherance of the conspiracy. This contention was held to be untenable because the offense under that section consists in the conspiracy alone, *U. S. vs. Britton* on this point being once more quoted from and approved.

Finally, in the very case at bar, this court again, in 1905, reiterated this doctrine by citing *U. S. vs. Britton* as establishing that the "offense consisted in the conspiracy and that the overt act afforded a *locus penitentia*" (199 U. S., 62).

There is no force, it is submitted, in the suggestion that section 731 of the Revised Statutes, providing that where an offense against the United States is committed in one judicial district and completed in another it may be punished in

either, is peculiarly applicable to cases of conspiracy. That provision is first found in section 30 of the act of March 2, 1867 (14 Stat., 484). It is obvious that that section applies to two separate and distinct matters—one the crime of conspiracy and the other the jurisdiction of the Federal courts when any offense whatever is begun in one judicial district and completed in another. This section 30 is part of a long act of Congress which revised and consolidated prior acts relating to internal revenue. When it was incorporated into the Revised Statutes the part of it which refers to the crime of conspiracy became section 5440, and that part of it which refers to the jurisdiction of the Federal courts when an offense is begun in one district and completed in another became section 731. No one, in looking at these two sections as they stand in the Revised Statutes, would suppose that one has any special relation to the other. This being so, it is not competent for the Government to go back to the original statute for the purpose of basing an argument on it which is wholly inapplicable to the provisions in question as found in the law as it stands now or as it stood when the indictment in this case was found. This is aptly illustrated by the case of *Hamilton vs. Rathbone*, 175 U. S., 414. In that case the provision of the Revised Statutes involved plainly gave to a married woman in this District the right to dispose by her will of property that came to her from her husband. Upon reference to the original act it was found that quite a different intention was manifest, this result being brought about by a slight change in phraseology which the revisers evidently thought was immaterial. But this court held that it was not competent to go back to the original act for the purpose of raising a doubt which did not exist in contemplating the language of the revision.

There is another difficulty with the indictment in this case which is relied upon on pages 58 to 63 of the original brief for the petitioners in this case which the learned Solicitor General does not attempt to controvert and does not

even refer to in his substitute brief; that is, that even if it be assumed that the overt act is part of the crime of conspiracy under section 5440, this prosecution must fail because the crime charged is not the crime proved. The averment of the indictment is that the conspiracy itself was entered into in the District of Columbia and that the overt acts were committed here. Now, it is expressly conceded in the brief for the Government here, as it was conceded by the court and by counsel for the Government at the trial, that there was no evidence that any conspiracy was entered into in this District. Assuming that the theory of the Government as to the nature of the offense involved is correct and that the crime consisted in entering into an unlawful agreement in California plus the commission of certain overt acts in the District of Columbia, the defendant is just as much entitled to have the place of the commission of the conspiracy correctly charged as he is to have correctly charged the place of the commission of the overt acts. It will not do for the Government to mislead persons accused of this offense by telling them that the offense which they are to meet is a crime consisting of two parts and that both of them were committed in a certain place, when as a matter of fact one of them was committed in that place and the other somewhere else.

And this leads to a consideration of the applicability to this case of the language relied upon by the Solicitor General which was used by Mr. Justice Holmes in delivering the opinion of this court in the *Kissel* case (218 U. S., 601).

The indictment in that case charged that the original unlawful agreement was entered into at a certain time and that the defendants continued to act together in the carrying out of the alleged conspiracy until shortly before the finding of the indictment. The particular offense charged was a conspiracy in restraint of trade in getting control of a competing manufactory, closing it, and keeping it closed. It was averred in the indictment that the defendants entered

into the alleged conspiracy in 1903 and that they continued it down to the time of the filing of the indictment, in July, 1909.

In this case the indictment simply charges that on a certain day, "to wit, the 30th day of December, 1901," the defendants entered into an unlawful agreement the nature of which the indictment sets forth at length. There is no averment that it was continued for any length of time. Assuming as we must, in view of the decision of this court in the Kissel case, that a conspiracy may be an offense continuing through a term of years, it must be conceded that it may also consist in a simple agreement made at a fixed and definite date followed by one or more overt acts to carry it into effect. Since the indictment in this case charges not a continuing agreement but an agreement made on a definite fixed day, then while the Government is not bound by that date, but may show the conspiracy to have been entered into at any time within three years before the finding of the indictment, it cannot depart from the indictment and rely upon a continuing agreement such as was set forth in the Kissel case.

It is not deemed necessary to again go over the various cases in which the courts have expressed an opinion as to whether all the parties to a conspiracy are punishable in the jurisdiction in which one of them or the agent of one of them does anything in furtherance of the conspiracy. It is confidently asserted that no case has been found in which it has been expressly adjudicated that the commission of an overt act by one of several alleged conspirators or his agent of itself gives jurisdiction in the place where such overt act is committed as against all the parties charged with being concerned in the conspiracy. In the original brief on behalf of the petitioners on page 43 it was stated that the case of *Com. ex. Corlies, 3 Brewster (Pa.), 575*, "seems to be in

point." And in his substitute brief (45) the learned Solicitor General refers to this concession. But he will recall, as members of the court who were present will doubtless recall, that in the oral argument counsel for the petitioners said that this was an error and that *Com. vs. Corlies* is not in point. It is not in point for this reason:

The charge in that case was that one Clark, who lived in New York, and the defendant Corlies, who lived in Philadelphia, had conspired to cheat the prosecuting witness out of certain property which he had in a billiard saloon in Philadelphia by giving in exchange for the property an order for certain liquors which they told him Clark had in a Government warehouse, but which in fact he did not have at all. The property which it was the object of the conspiracy to acquire was in Philadelphia, and Corlies there obtained it. Corlies was therefore tried in Philadelphia, where he had carried the conspiracy into full operation and effect. Clark was not on trial.

Besides, the question of where the conspiracy was entered into was left to the jury. Judge Paxson, in delivering the opinion, said (577):

"I instructed the jury that they must find from the evidence that there was a conspiracy within the jurisdiction of the court, between two or more persons, to cheat and defraud the prosecutor, or they must acquit the defendant. That the question, whether or not such a combination existed within our jurisdiction, was a fact for them to ascertain from all the evidence in the cause. That if they found such conspiracy existed here, then any overt act of any other conspirator, done elsewhere in the pursuit of the common object, was evidence not only against himself, but also against his co-conspirators."

In the original brief for the petitioners (25 to 35) it was shown that the revolution which resulted in the separation of the American colonies from Great Britain largely grew out of the fact that the King of England and his Parliament

sought to take citizens of the colonies to England to be tried for treason under a statute enacted in the reign of Henry VIII. The court is now further reminded that it was an attempt to enforce that statute which immediately brought about the first shedding of blood in the Revolution. When General Gage sent a detachment of his troops from Boston to Concord on the 18th of April, 1775, one of his main objects was to arrest Samuel Adams and John Hancock, who were then stopping at a house near Lexington, in order that they might be taken to England to be there tried for treason. They were warned during that night by Paul Revere, and barely escaped arrest. During their flight across the fields on the morning of April 19 they heard the guns fired at Lexington, a sound welcome to the ears of Samuel Adams, who said to his friend and fellow-fugitive, "Oh, what a glorious morning is this."\*

It is not possible for anybody to read the history of those stirring days which immediately preceded the Revolution and suppose that those who brought it on and carried it through and enacted the Constitution under which we live ever contemplated that the Government should carry its citizens from one end of the country to the other to be tried for a conspiracy entered into in the place from which they were taken on the flimsy excuse that because one of the accused had employed a lawyer to enter his appearance for him in the Land Office in the city of Washington, or had caused a paper to be deposited in the mails in California to be transmitted to Washington, the conspiracy itself was entered into here, or was "continued" here. This is an evasion based upon a fiction. If it had been presented to the State conventions which ratified the Constitution as the result of what they were asked to do, it is doubtful

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\*Beginnings of the Am. Rev., by Ellen Chase, vol. 2, pp. 313-339; Wells' Life of Samuel Adams, vol. 2, p. 290; Fisk's Am. Rev., vol. 1, p. 120; Concord Fight Centennial Celebration (published by the town), p. 97; Hosmer's Life of Samuel Adams (American Statesmen series), p. 329.

whether the Constitution would have received a single vote in a single State.

The same question that was involved in this effort to take Samuel Adams and John Hancock to England to be tried for treason was brought to the attention of President Andrew Johnson in 1865, when an effort was made to have Jefferson Davis tried on such a charge in some one of the Northern States in which the armies of the Southern Confederacy had been engaged in levying war against the United States. The President referred the matter to Attorney-General Speed. His opinion is reported in 11 Opin. Atty.-Genl., 411. He said in part:

"I have ever thought that trials for high treason cannot be had before a military court. The civil courts have alone jurisdiction of that crime. The question then arises, where and when must the trials be held?

"In that clause of the Constitution mentioned in the resolution of the Senate, it is plainly written that they must be held in the State and district 'wherein the crime shall have been committed.' I know that many persons of learning and ability entertain the opinion, that the commander-in-chief of the rebel armies should be regarded as constructively present with all the insurgents who prosecuted hostilities and made raids upon the northern and southern borders of the loyal States. This doctrine of constructive presence, carried out to its logical consequences, would make all who had been connected with the rebel armies liable to trial in any State and district into which any portion of those armies had made the slightest incursion. Not being persuaded of the correctness of that opinion, but regarding the doctrine mentioned as of doubtful constitutionality, I have thought it not proper to advise you to cause criminal proceedings to be instituted against Jefferson Davis, or any other insurgent, in States or districts in which they were not actually present during the prosecution of hostilities.

\* \* \* \* \*



"I should regard it as a direful calamity, if many whom the sword has spared the law should spare also; but I would deem it a more direful calamity still, if the Executive, in performing his constitutional duty of bringing those persons before the bar of justice to answer for their crimes, should violate the plain meaning of the Constitution, or infringe, in the least particular, the living spirit of that instrument."

### **Statute of Limitations.**

It is deemed necessary to add but little to what was said in the original brief for the petitioners as to the correctness of the rulings of the courts below relating to the application of the statute of limitations to this case. It seems to be assumed by the Solicitor General that the rulings referred to apply to the case of the petitioner Schneider only. Of course, this is a mistake. The only charge against the defendants in the indictment, so far as Schneider is concerned, is that, *as an employee* of Hyde and Benson, he was to aid them in carrying out their alleged scheme of obtaining improperly from the States of California and Oregon their school lands for the purpose of exchange under the forest-reserve laws of the United States. It turned out at the trial that Schneider had never been in the employ of Hyde and Benson, and that, even as Hyde's employee, he had done no act in relation to the forest-reserve business for four and a half years before the indictment was found. The courts below have held that notwithstanding this he continued to be a member of the alleged conspiracy not only after he ceased to have anything to do with Hyde's land business, but after he ceased to be in the employ of Hyde even as superintendent of the latter's cattle ranches, and further, even after the time that he had made his alleged confession to Holsinger and confirmed it by his statements to Burns and Corbett. All this is discussed on pages 65 to 85 of the original brief on behalf of

the petitioners. The facts are not controverted. The case went to the jury upon the instruction of the court that if Schneider *as an employee* of Hyde at any time aided Hyde in improperly obtaining the school lands of the States, knowing that Hyde intended to exchange them for other lands belonging to the United States, he continued to be a party to the alleged conspiracy as long as he lived, unless he in some formal manner withdrew from it. If this ruling was erroneous as to Schneider, it was of course erroneous as to Hyde, because Hyde could not be convicted of conspiring with Schneider at a time when by the rules of law Schneider could not be convicted of conspiring with Hyde. The case is indeed somewhat stronger in the case of Hyde than it is in the case of Schneider, because Schneider's alleged confession was admitted against him alone, and there are some passages in that confession which are claimed by the Government to amount to an admission on the part of Schneider that he was concerned in Hyde's land business within three years before the indictment was found. All this, however, as already stated, is immaterial, because of the ruling of the court that once a conspirator always a conspirator. The courts below have both expressly repudiated the doctrine that in cases of this kind the government to convict a defendant must show that he "consciously participated" in a conspiracy within three years before the finding of the indictment. It was not even left to the jury to say whether the evidence as to what Schneider did in Oregon in 1898 and in Hyde's office in 1898 and in 1899 coupled with his "confession" was sufficient to satisfy them that he was in collusion with Hyde in this business within three years before he was indicted. They were told as *matter of law* that if he was a conspirator in 1898 he must be considered as having been one in 1904—that that result flowed as *matter of law* from his refusing to testify against Hyde when he was brought to Washington and taken before the grand jury.

Counsel for the petitioners will not attempt here to renew the discussion of the assignments of error which are dealt with in the "Supplemental Brief for the Petitioners" which was filed before the former oral argument. On one question only an additional authority is cited—a case decided by the Supreme Judicial Court of Massachusetts in January last.

In that case the plaintiff in a personal injury action sought to recover damages for the loss of an eye. The jury rendered a verdict in his favor for \$200. In holding that this was evidently a "compromise verdict," not based on any consideration of the evidence and that for that reason it should not stand, the court said:

"It is urged that this was a compromise verdict, where certain jurors must have conceded their conscientious belief that the defendant ought to prevail in order that agreement might be reached. In order to pass upon the soundness of this argument, it becomes necessary to inquire what a compromise verdict is, and to ascertain whether this was such a verdict. It was said by Cooley, J., in *Goodsell vs. Seeley*, 46 Mich., 623, at page 628, 10 N. W., 44, at page 46 (41 Am. Rep., 183): 'It is no doubt true that juries often compromise \* \* \* and that by splitting differences they sometimes return verdicts with which the judgment of no one of them is satisfied. But this is an abuse. The law contemplates that they shall, by their discussions, harmonize their views, if possible, but not that they shall compromise, divide and yield for the mere purpose of an agreement. The sentiment or notion which permits this tends to bring jury trial into discredit, and to convert it into a lottery.' See, also, *Meyer vs. Shamp*, 51 Neb., 424, 430; 71 N. W., 57. While jurymen must not go contrary to their convictions, they may properly give great heed to the opinions of their fellows, and by reasonable concessions reach a conclusion which, although not that originally entertained by any of them, nevertheless may be one to which all can scrupulously adhere. *Scholfield, Gear & Pully Co. vs. Scholfield*, 71

Conn., 1-23; 40 Atl., 1046; *Hamilton vs. Owego Water Works*, 22 App. Div., 573, 578; 48 N. Y. Supp., 106, affirmed 163 N. Y., 562; 57 N. E., 1111; *Wolf vs. Goodhue Fire Ins. Co.*, 43 Barb. (N. Y.), 400-407, affirmed 41 N. Y., 620; *Owens vs. Missouri Pacific Ry.*, 67 Tex., 679-684; 4 S. W., 593; *Benedict Beef & Prov. Co.*, 115 Mich., 527; 73 N. W., 802; *Snyder vs. Lake Shore & Mich. Southern Ry.*, 131 Mich., 418; 91 N. W., 643. A verdict which is the result of real harmony of thought growing out of open-minded discussion between jurors with a willingness to be convinced, with a proper regard for opinions of others and with a reasonable distrust of individual views not shared by their fellows and of fair yielding of one reason to a stronger one, each having in mind the great desirability of unanimity both for the parties and for the public, is not open to criticism. But a verdict which is reached only by the surrender of conscientious convictions upon one material issue by some jurors in return for a relinquishment by others of their like settled opinion upon another issue and the result is one which does not command the approval of the whole panel, is a compromise verdict, founded upon conduct subversive of the soundness of trial by jury. The jury room cannot be entered in order to ascertain what has transpired there. Its deliberations are in secret, and cannot be made the subject [of] testimony ordinarily by jurors. *Woodward vs. Leavitt*, 107 Mass., 453; 9 Am. Rep., 49. What went on there may be learned by other sources. *Wright vs. Abbott*, 160 Mass., 395; 36 N. E., 62; 39 Am. St. Rep., 499. It is not infrequently possible to determine with some approximation to accuracy what went on there from the result produced. This is such a case.

"It is plain that this was a compromise verdict. That conclusively appears from the record. The issue of liability was contested at the trial. There was no contest as to the injury done. It was such as necessitated the removal of the eye of a boy under 21 years of age. He must go through life, which may be a long one, disabled and disfigured. \* \* \* The verdict itself is almost conclusive demonstration

that it was the result not of justifiable concession of views, but of improper compromise of the vital principles which should have controlled the decision. It could have been reached only by certain of the panel conceding their conscientious belief that the defendant ought to prevail upon the merits in order that a decision might be reached."

Simmons *vs.* Fish, 97 N. E. Rep., 102.

This vindicates in forcible terms what was said on page 91 of the supplemental brief for the petitioners and which is here repeated:

"For eleven weeks these men had been kept from their families and their business listening to the witnesses, the counsel, and the court. For three days and three nights longer they had wrestled with the great mass of evidence submitted to them. At the end of that time they came into court and reported that they could not agree. The court sent them out again, stating then that if they could not conscientiously and freely agree they would be discharged (854). From 11:30 in the morning until nearly 3 o'clock in the afternoon of that day they struggled again with the evidence. At the end of that time they returned to the court-room and informed the court that they could not "conscientiously and freely agree." They supposed, of course, that they would then be allowed to go home, but the court, instead of discharging them, directed them to go over each of the forty-two counts of the indictment as to Hyde, then to do the same as to Benson, and so on with the other two defendants. This necessarily meant another night's imprisonment at least. Then they gave up and *in a few minutes* reported what is manifestly a compromise verdict—one that could not by any possibility have been based on the evidence."

A. S. WORTHINGTON,  
*Attorney for Petitioners.*









## SUBJECT INDEX AND CASES CITED.

	Page.
STATEMENT OF THE CASE.....	1
Summary of the indictment.....	1
The proceedings.....	4
Assignment of errors.....	5
THE INDICTMENT IS GOOD IN SUBSTANCE AND FORM.....	6
Dealy v. United States, 152 U. S., 539.....	9
Hyde v. Shine, 199 U. S., 62.....	6
Hyde v. United States, 27 App. (D. C.), 362.....	6
United States v. Keitel, 211 U. S., 370.....	6
THE PLEA IN ABATEMENT WAS INSUFFICIENT AND CAME TOO LATE....	9
Agnew v. United States, 165 U. S., 36.....	13
THE JURISDICTION OF THE COURT OF THE DISTRICT OF COLUMBIA ATTACHED BECAUSE OF OVERT ACTS COMMITTED BY DIMOND AND OTHERS IN THE DISTRICT OF COLUMBIA ACTING AS INNOCENT AGENTS OF HYDE AND SCHNEIDER.....	14
An overt act is not a part of the crime of conspiracy at common law.....	26
O'Connell v. The Queen, 1 Cox's Crim. Cas., 413, 472.....	26
An overt act is necessary to complete the offense under section 5440 R. S., and is therefore a part of the offense.....	18
Bannon v. United States, 156 U. S., 464.....	28
Dealy v. United States, 152 U. S., 539.....	28
Hyde v. Shine, 199 U. S., 62.....	29
Pettibone v. United States, 148 U. S., 197.....	27
United States v. Bayer, 4 Dill., 407.....	22
United States v. Boyden, 1 Lowell, 266.....	20
United States v. Bradford, 148 F. R., 413.....	25
United States v. Britton, 108 U. S., 199.....	23
United States v. Dennee, 3 Woods, 47.....	24
United States v. Donau, 11 Blatchf., 168.....	19
United States v. Hirsch, 100 U. S., 33.....	22
United States v. Kissel, 218 U. S., 601.....	30
United States v. Nunnemacher, 7 Biss., 111.....	21
United States v. Sacia, 2 F. R., 754.....	21
The overt act gives jurisdiction of the offense in the locality of the act.....	33
Text books, English—	
Archbold's Crim. Plead., 1910 ed., 1420.....	39
1 Gabbett's Crim. Law, 257.....	40
1 Russell—Law of Crimes—7th ed., 179.....	35

## II

### THE JURISDICTION OF THE COURT OF THE DISTRICT OF COLUMBIA ATTACHED, ETC.—Continued.

	Page.
Text books, American—	
6 Am. & Eng. Enc. of Law, 2d ed., 844.....	42
Bishop's Crim. Proc., 4th ed., sec. 61.....	42
8 Cyc. Law and Proc., 687.....	42
Wharton Crim. Law, 10th ed., sec. 1397.....	41
Cases, English—	
King v. Brisac, 4 East, 164.....	37
R. v. Best, 1 Salk., 174.....	36
Reg. v. Quinn, 19 Cox's Crim. Cas., 78.....	39
Reg. v. Connolly, 25 Ontario, 151.....	39
Cases, American—	
Arnold v. Weil, 157 F. R., 429.....	52
Bloomer v. State, 48 Md., 521.....	47
Comm. v. Bartilson, 85 Pa. St., 482.....	46
Comm. v. Corlies, 3 Brews. (Pa.), 575.....	45
Comm. v. Gillespie, 7 S. & R., 469.....	44
Ex parte Hoffstot, 180 F. R., 240.....	53
Ex parte Rogers, 10 Tex. App., 655.....	51
Hyde v. Shine, 199 U. S., 62.....	33
Ins. Co. v. State, 75 Miss., 24.....	48
Int. Har. Co. v. Comm., 137 Ky., 668.....	49
Noyes v. State, 41 N. J. L., 418.....	46
Pearce v. Territory, 11 Okla., 438.....	50
People v. Arnold, 46 Mich., 268.....	48
People v. Mather, 4 Wend. (N. Y.), 229.....	43
People v. Summerfield, 96 N. Y. Supp., 502.....	44
Raleigh v. Cook, 60 Tex., 438.....	52
Robinson v. United States, 172 F. R., 105.....	52
State v. Hamilton, 13 Nev., 386.....	49
State v. Nugent, 77 N. J. L., 84.....	47
United States v. Greene, 115 F. R., 343.....	52
United States v. Newton, 52 F. R., 275.....	52
The overt act continues the offense for the purposes of the statute of limitations.....	54
Jones v. United States, 162 F. R., 417.....	54
Lorenz v. United States, 24 App. (D. C.), 337.....	54
United States v. Barber, 157 F. R., 889.....	54
United States v. Brace, 149 F. R., 874.....	54
United States v. Bradford, 148 F. R., 413.....	54
United States v. Kissel, 218 U. S., 601.....	30
Ware v. United States, 154 F. R., 577.....	54
Section 731, R. S., is peculiarly applicable to cases of conspiracy and authorizes jurisdiction of the offense in the locality of the overt act.....	57
Section 731 does not offend the constitutional provisions respecting the place of trial.....	59
Armour, etc., Co. v. United States, 209 U. S., 56.....	63
Haas v. Henkel, 216 U. S., 462.....	64

### III

#### THE JURISDICTION OF THE COURT OF THE DISTRICT OF COLUMBIA ATTACHED, ETC.—Continued.

	Page.
Constructive presence; acting in a place through innocent agents or mechanical instrumentalities, although the directing person is not present at the place where the act is done, will confer jurisdiction in criminal cases.....	64
State authorities—	
Comm. v. Harvey, 8 Am. Jurist, 69.....	66
Ex parte Rogers, 10 Tex. App., 655.....	67
McKee v. State, 111 Ind., 378.....	67
People v. Adams, 3 Denio, 190.....	65
State v. Grady, 34 Conn., 118.....	66
Federal authorities—	
Benson v. Henkel, 198 U. S., 1.....	69
Burton v. United States, 202 U. S., 344.....	70
Homer v. United States, 143 U. S., 207.....	68
Hyde v. Shine, 199 U. S., 62.....	69
Palliser's Case, 136 U. S., 257.....	67
Strassheim v. Daily, 221 U. S., 280.....	71
United States v. Burr, 25 Fed. Cas., 55, distinguished.....	72
OVERT ACTS WITHIN THE PERIOD OF LIMITATION LIFT THE BAR OF THE STATUTE.....	75
United States v. Kissel, 218 U. S., 601.....	75
WHETHER THE CONSPIRACY INCLUDED WITHIN ITS SCOPE THE BRIBERY OF OFFICIALS AT WASHINGTON WAS PROPERLY SUBMITTED TO THE JURY AS A QUESTION OF FACT.....	80
THE ACQUITTAL OF BENSON AND DIMOND DID NOT REQUIRE THE ACQUITTAL OF HYDE AND SCHNEIDER.....	82
RULINGS ON QUESTIONS OF EVIDENCE.....	83
The mode of examining witnesses is a matter largely within the discretion of the trial court.....	85
Putnam v. United States, 162 U. S., 687.....	85
St. Clair v. United States, 154 U. S., 134.....	85
Affidavits for the acquisition of school lands from the State of California must be based on personal knowledge.....	88
McKenzie v. Brandon, 71 Cal., 209.....	89
Plummer v. Woodruff, 72 Cal., 29.....	89
Great latitude is allowed in evidence to prove fraudulent purpose.....	91
Castle v. Bullard, 23 How., 172.....	92
Holmes v. Goldsmith, 147 U. S., 150.....	92
Wood v. United States, 16 Pet., 342.....	92
Evidence in corroboration of confessions need not of itself be sufficient to establish the offense.....	93
Flower v. United States, 53 C. C. A., 271.....	95
People v. Jones, 123 Cal., 65.....	96
Ryan v. State, 100 Ala., 94.....	95
State v. Patterson, 73 Mo., 695.....	96

# IV

	Page.
THE DEEDS FOR SCHOOL LANDS FROM THE STATES OF CALIFORNIA AND OREGON WERE FRAUDULENTLY PROCURED.....	106
Hyde v. Shine, 199 U. S., 62.....	106
THE CHARGE OF THE COURT WAS FREE FROM ERROR.....	108
THERE WAS NOTHING IN THE CONDUCT OF THE COURT AT THE TRIAL TO THE PREJUDICE OF THE DEFENDANTS.....	109
THE VERDICT MAY NOT BE IMPEACHED BY THE JURORS BECAUSE OF ANYTHING INHERING THEREIN.....	115
Gottlieb Bros. v. Jasper, 27 Kans., 770.....	120
Mattox v. United States, 146 U. S., 140.....	119
Perry v. Bailey, 12 Kans., 539.....	118
Woodward v. Leavitt, 107 Mass., 453.....	119
Wright v. Telegraph Co., 20 Ia., 195.....	120

# In the Supreme Court of the United States.

OCTOBER TERM, 1911.

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FREDERICK A. HYDE AND JOOST H. Schneider, petitioners, v. THE UNITED STATES.	} No. 447.
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*ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF  
THE DISTRICT OF COLUMBIA.*

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## STATEMENT, BRIEF, AND ARGUMENT FOR THE UNITED STATES.

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### STATEMENT OF CASE.

The petitioners, Frederick A. Hyde and Joost H. Schneider, together with John A. Benson and Henry P. Dimond, were indicted in the District of Columbia under section 5440, Revised Statutes, for a conspiracy to defraud the United States.

### The indictment charged

That Hyde and Benson were engaged at San Francisco, Cal., for their own profit and gain, in the business of securing for themselves public lands of the United States outside of forest reserves in lieu

of school lands belonging to the States of California and Oregon and lying within such forest reserves. (R., 1, 2.)

That Dimond and Schneider were employees for hire of Hyde and Benson, Dimond being also an attorney.

That Woodford D. Harlan, William E. Valk, Benjamin F. Allen, and Grant I. Taggart were salaried officials of the United States having duties relating to the public domain. (R., 2.)

That school lands belonging to California and Oregon and lying within forest reserves might be purchased by residents of those States, not to exceed 640 acres under the laws of California and not to exceed 320 acres under the laws of Oregon, by any one person, a condition of purchase being that it was made by the purchaser in good faith, for his own benefit, and without any existing contract or agreement to sell the land to some one else. Affidavits to this effect must be filed in support of the application for purchase. (R., 2, 3.)

That Hyde and Benson procured people, by small payments of money, to make purchases of school lands, ostensibly for themselves but in fact for Hyde and Benson, and in other cases Hyde and Benson made applications and secured the purchase of lands by themselves in the names of fictitious persons. False and forged applications and affidavits were among the means employed by them in thus securing school lands lying within the forest reserves from the States of California and Oregon. (R., 3.)

That the school lands thus fraudulently secured from the States were by Hyde and Benson then exchanged for lands of the United States lying outside of the forest reserves. This business was carried on upon a very extensive scale. (R., 4.)

That Hyde and Benson bribed Harlan and Valk, employees of the General Land Office, to give them helpful information, expedite the exchange of lands, and thwart any investigation into their practices; and bribed Allen and Taggart, who were forest superintendent and forest supervisor, respectively, to give them information as to the establishment of forest reserves and to use their official influence to secure the establishment of such reserves in a way and to include lands which would be helpful to the fraudulent scheme of Hyde and Benson. (R., 4, 5.)

That Dimond was employed to help along the scheme, as agent and attorney of Hyde and Benson, in the General Land Office, and Schneider assisted by procuring applicants for the purchase of school lands and by forging the documents necessary to secure titles to school lands in the names of fictitious persons. (R., 6.)

The indictment is in 42 counts, but the conspiracy charged in them all is one and the same—a general conspiracy, continuous in time, to secure, without limit, lands of the United States by means of the kind hereinbefore stated. (R., 1-94.)

The different counts each charged a different overt act, or different overt acts, in pursuance and furtherance of the conspiracy.

### The proceedings.

The indictment was returned on February 17, 1904. The defendants, Hyde and Dimond, were arrested outside the District of Columbia and resisted removal by *habeas corpus* proceedings, which were decided against them May 29, 1905. (*Hyde v. Shine*, 199 U. S., 62.)

There was a demurrer to the indictment, which was overruled (R., 95), and an appeal from this ruling, the appeal resulting in an affirmance of the ruling. (*Hyde v. United States*, 27 App. D. C., 362.)

Motions to require the Government to elect on which counts it would proceed and for a bill of particulars were next filed. (R., 101-109.) The motions to elect were overruled and the motions for a bill of particulars were granted, and the bill filed in due season. (R., 109-133.)

When the case was called for trial, pleas in abatement were filed, and demurrers to these were sustained. (R., 137-141.)

The defendants were then arraigned and pleaded not guilty, and the case proceeded to trial. (R., 141.)

Benson and Dimond were acquitted; Hyde and Schneider were convicted on all the counts except 29 and 33, which were abandoned by the Government. (R., 146-147.) The evidence introduced by the Government was not the same as to the several defendants.

The conviction of Hyde and Schneider was, upon appeal, affirmed by the District Court of Appeals.



(*Hyde v. United States*, 35 App. D. C., 451.) The case was brought to this court by writ of certiorari, the petition for which was not opposed by the United States.

So far as any further statement of facts may be necessary to an understanding of any of the questions involved, it will be made in connection with the argument upon that question.

#### ASSIGNMENT OF ERRORS.

There is no assignment of errors in the record except as the opinion of the Court of Appeals discloses the assignment of errors made by the petitioners in the brief filed with that court. These assignments are 38 in number and will be considered by us under the following general heads:

1. The sufficiency of the indictment. (First assignment.)
2. The pleas in abatement. (Second and third assignments.)
3. The jurisdiction of the Supreme Court of the District of Columbia. (Fourth to sixth assignments.)
4. The statute of limitations. (Seventh and thirty-fourth to thirty-sixth assignments.)
5. Scope of the conspiracy. (Eighth and thirty-seventh assignments.)
6. Effect of the acquittal of Benson and Dimond. (Ninth and tenth assignments.)
7. Rulings on questions of evidence. (Twelfth to seventeenth, twenty-first to twenty-third, twenty-sixth, twenty-seventh, and thirtieth to thirty-third assignments.)

8. The validity of the State deeds. (Twenty-fourth assignment.)

9. Charge of the court. (Eleventh, twenty-fifth, twenty-eighth, and twenty-ninth assignments.)

10. Conduct of the court. (Seventeenth to nineteenth assignments.)

11. Impeachment of the verdict. (Twentieth assignment.)

12. Motion in arrest. (Thirty-eighth assignment.)

### ARGUMENT.

#### I.

#### THE INDICTMENT.

That the facts charged in the indictment constituted an offense was ruled by this court in *Hyde v. Shine* (199 U. S., 62), and the ruling was approved in *United States v. Keitel* (211 U. S., 370).

The formal sufficiency of the indictment was upheld by the District Court of Appeals in *Hyde v. United States* (27 App. D. C., 362.)

The indictment is very long, extending through 94 pages of the record, but this is because the operations of the defendants were very extensive. And there are 42 counts, each dealing with different overt acts.

One formal objection is that the indictment charges several different conspiracies, and so is bad for duplicity.

The answer to this is that the indictment plainly charges but one conspiracy, but that continuing through years and comprehending many transac-

tions. So the indictment was construed at the trial, and the defendants were tried for and convicted of but one offense.

Another objection is that the indictment does not inform the defendants of the nature of the accusation against them.

This is answered by reference to the indictment itself.

It informs the defendants that the United States had lands outside of its national forest reserves which it was ready to exchange for lands within such reserves; that the States of California and Oregon had lands which were within or might be brought within such national forest reserves; that these States would sell these lands in limited tracts to residents who were purchasing in good faith for themselves; that the defendants desired to get the lands of the United States lying outside of the reserves, not particular tracts, but generally any and all tracts which they might find it to their advantage to obtain; that they obtained conveyances of lands from the State in some cases to fictitious persons, which involved the use of false and fraudulent documents, and in other cases to persons in existence, who, however, were not qualified to buy, because not buying for themselves, but hired by the defendants to buy for them, which involved false or fictitious affidavits in the consummation; that the State lands to which they thus got fraudulent title they exchanged with the Government for lands outside of forest reserves; that they corrupted certain agents of the Govern-

ment and induced the establishment of reserves for the purpose of including State lands; that they corrupted other agents of the Government in order to facilitate the exchange of lands and to ward off investigation of their transactions; and that all these things were done under and pursuant to a conspiracy which the defendants had formed, and that this conspiracy was the subject of the indictment as one to defraud the United States.

And these facts are set out with details of time, place, and circumstance. Hyde and Benson are said to be the prime movers, and Schneider and Dimond their hired assistants. Various things done by each of the defendants are set out as overt acts in furtherance of the conspiracy, and lands which they got or endeavored to get from the United States, and State lands which they gave or offered in exchange, are set out by specific description. The time of the conspiracy is laid within the period of limitation, and the dates of the overt acts are most of them definitely and the others approximately fixed.

The offense charged was the conspiracy, and that is fully and definitely described. True, the indictment does not limit its charges to any particular tract or tracts of land, and the conspiracy was not so limited. It was general in that respect. The defendants proposed to get what they could and to "get a plenty." Neither does the indictment state the precise fraudulent method which was to be used in each case of acquiring State lands, *i. e.*, whether by purchase in the name of a fictitious person or by

a real person not qualified to purchase, and the conspiracy was not definite as to this. They would do in any case as they came to it whatever would best serve their purpose.

The indictment is clearly sufficient under the ruling of this court in *Dealy v. United States* (152 U. S., 539).

The acquisition of a tract of State land was not the offense charged in any count; it was one of the things to be done in furtherance of the conspiracy which was the offense. The conspiracy contemplated a choice of methods, to be determined not when the conspiracy was formed, but after it was in operation and variously as the exigencies of each case might suggest. The court did require the Government to set out by bill of particulars what its proof would be in each case, whether of purchase in a fictitious name or by a real person not qualified to purchase (R., 109-110), and, we venture to say, there was left no room for question by the defendants either as to the nature of the accusation against them or as to the nature of the proof by which that accusation would be supported.

## II.

### THE PLEA IN ABATEMENT.

The indictment was returned February 17, 1904 (R., 94), and the plea in abatement was filed on April 1, 1908 (R., 137-140). Hyde had resisted removal to the District as long as he could. When brought here he demurred to the indictment, and from a judgment against him on that he appealed

to the District Court of Appeals. When the mandate to proceed with the case came down from the Court of Appeals, Hyde filed a motion to require the Government to elect the counts of the indictment on which it relied and for a bill of particulars. The motion to elect was overruled and the bill of particulars was granted. This was in August, 1906. (R., 110.) Schneider meanwhile was apparently awaiting the results of Hyde's efforts. The case on December 18, 1906, was set to be tried on February 11, 1907 (R., 135), but for some reason not disclosed the trial was not then entered upon.

On April 1, 1908, as the case was called for trial, after a period of delay exceeding four years, and more than the full term of limitation, Hyde and Schneider filed pleas in abatement based upon alleged irregularities in selecting the grand jury which presented the indictment against them. (R., 137-140.)

The law provides that the jury commission, consisting of the clerk of the court, the marshal, and the collector of taxes, shall make the list of jurors for service, and that the names, which are to be from citizens in the different parts of the District, shall be placed in a box provided for that purpose. That box is to be safely kept by the clerk, and from it, when the time comes therefor, the clerk is to draw the jury. (Dist. Code, secs. 198-204.)

This law, the plea alleged, was disregarded in that *the commission placed on the list* "the names of persons, many of which were selected not by themselves or by any of them, but by some other person or persons

whose names are to this defendant unknown." (R., 137, 139.) This shows no violation of the law. If the commission placed the names on the list, they made the list. Even though some one else suggested the names, and there is nothing in the law forbidding the commission from taking suggestions, the selection was by the commission. The law implies that the commission may be aided by others, for the "jurors shall be selected as nearly as may be from the citizens in the different parts of the District," and the actual personal acquaintance of the commissioners with the citizens of the District, unaided in any way, might well be inadequate to the making up of a jury list in the spirit of the law.

It is further alleged that the commission appointed a secretary, and this secretary under the order of the commission and by consent of Young, the clerk of the court, took the box in charge and unattended carried it into a *certain* room of the City Hall. (R., 137.) The room is not otherwise designated. This did not violate the law, for while it is provided that the box shall be delivered to the clerk for safe-keeping and shall be in his custody, it does not mean that he shall have it in his personal keeping all the time.

Then it is alleged that Hartsock, the secretary, while he had the box, alone in a room of the City Hall, opened it, took out the jurors' names that were therein, "and from day to day during several successive days replaced in said box such of said names only as he deemed fit and proper to be replaced," and then returned the box to the clerk, and the

grand jury which indicted the defendants was drawn from this box. (R., 137, 138.)

The plea states that the commission undertook to give Hartsock the right of access to the box, but it does not state that they authorized him to take out any names from it or that they knew that he had done so.

More than this, it does not appear that Hartsock withdrew a single name from the jurors' list. He took out from the box all of the pieces of paper containing the names and replaced "*such of said names* only as he deemed fit and proper." This excludes his having added any names to the list, so that it was not tainted by the presence of anyone not selected by the commission, and it does not exclude his having replaced every name originally in the box.

It is hard to determine what is meant by this plea. It certainly does not allege that the commission abdicated their function of making the jury list and delegated it to their secretary, for it alleges that the names in the box, and which made up the list, were placed there by the commission. It does not allege that the commission directed Hartsock to purge or cut down the list which they had made up, or that they knew what he had done; and, finally, it does not allege that Hartsock did cut down the list by 10 names or by a single one. The plea sets forth simply certain physical acts and clothes them with no purpose or significance whatever. For aught that appears what Hartsock did was purely mechanical in purpose as in man-



ner. The box may have needed some repair or adjustment in some respect, and for the convenient doing of this the names may have been taken out. And when it came to replacing the names, of course as Hartsock was "solitary and alone" in "a certain room" in the City Hall, a designation not definite, albeit certain, he replaced "such of said names only as he deemed fit and proper to be replaced;" but being a faithful secretary he perhaps deemed it fit and proper to replace them all.

It is difficult to determine what it all means, and more difficult to determine how it could affect or prejudice the defendants.

The grand jury which returned this indictment was composed of 23 members. Every one of them was a qualified juror. Their names had been all placed in the box by the jury commission and all had been drawn from it by the clerk of the court. Every man on the jury was entitled to be there, and no man entitled to be there had been excluded by anything appearing in the plea. The composition of the jury does not appear to have been affected in any way.

Such a plea is entitled to no favor. "It must be pleaded with strict exactness." (*Agnew v. United States*, 165 U. S., 36.) If, in the case at bar, it was meant to say that the jury list as made up by the commission was changed by Hartsock, it is not stated with exactness, or even at all.

Another requirement of such a plea is that it be not dilatory in fact. In the *Agnew* case the plea was filed within a month after the venire for the grand

jury was issued, within 15 days after court opened, and within 5 days after the indictment was returned; and the court held that the objection to the mode of selecting the grand jury came too late. And here there was delay of four years, and no further prosecution possible if the indictment should be quashed.

Again in the *Agnew* case it is said (p. 44):

\* \* \* Another general rule is that for such irregularities as do not prejudice the defendant, he has no cause of complaint, and can take no exception.

Agnew said in his plea that the matters of which he complained in the drawing of the grand jury "tended to his injury and prejudice," but the court said that it was defective because "no grounds whatever are assigned for such a conclusion, nor does the record exhibit any such."

There is in the case at bar not even a general and unsupported allegation of prejudice.

### III.

#### THE JURISDICTION OF THE DISTRICT COURT.

The question of general interest and importance in the case is that of the jurisdiction of the District Court. This is presented by the fourth, fifth, and sixth assignments of error.

It must be conceded that the conspiracy was originally formed, not in the District of Columbia, but in the State of California, and perhaps the greater number of the operations under it were in California and

Oregon. Something, however, and that very important, must be done here. The exchanges of the State lands for Government lands outside the forest reserves could be consummated only through the General Land Office.

Dimond was employed to represent the conspirators here, and most of the overt acts set out as done in the city of Washington were done by him. He entered his appearance as attorney for Hyde and others in whose names selections were made, filed pertinent documents, and urged action by the Land Office. Acts of this kind done by him are set out in counts 1 to 14, 16 to 28, and 30 to 32, both numbers inclusive in each case, and count 34.

Overt acts are also charged against Hyde as committed in the city of Washington. Count 3 alleges that he caused an "authority to post notices" to be sent by mail from Visalia, Cal., to the General Land Office in Washington. (R., 13, 14.) Count 15 alleges that he sent a notice of appeal and statement of errors by mail from Vancouver in the State of Washington to the General Land Office in Washington (R., 36.) Count 22 alleges that he caused an "authority to post notices" to be presented and filed by Dimond in the General Land Office. (R., 50, 51.) Hyde was not personally present in the city of Washington at any time in connection with the operations of the conspiracy.

Overt acts are charged against Benson, done by him personally in the city of Washington. These consisted in the payment of bribes to clerks of the

land office; counts 35 to 40, both inclusive, charging bribes paid to Harlan (R., 86-92), and 41 and 42 bribes to Valk (R., 92-94).

The evidence was not the same as to any two of the defendants, and Benson and Dimond were acquitted. Must Benson and Dimond then be taken to be innocent and dealt with accordingly in considering the case as to Hyde and Schneider? For the present purpose this question need not be answered. The Supreme Court instructed the jury (R , 820) that:

\* \* \* If the defendants agreed together to defraud the United States out of the lands described in the general words of the indictment, and to do it by the fraudulent means there stated, and to accomplish their said purpose *by doing or having done* here in the District of Columbia any of the things alleged in the indictment as to be done here, and any of such things were done here pursuant to said agreement, then it is the same as if they had all been here and actually engaged in the doing of them.

The court refused an instruction to the effect that, if the jury were not satisfied beyond a reasonable doubt that Dimond in what he did in Washington was acting in collusion with one or more of the other defendants, they should find for all the defendants on the counts charging overt acts by him. (R., 801, 802.)

The jury, as the case was submitted to them, were justified in convicting Hyde and Schneider of conspiring in the District of Columbia, even though, as is the fact, neither of them at any time during the continuance of the conspiracy was present in the District, and what was done in furtherance of the conspiracy was done by innocent agents.

The Court of Appeals of the District held that this was proper, saying (R., 870):

But assuming that the acts in the District of Columbia were performed by Dimond alone, and that he was an innocent agent of the criminal principals; that is to say, that he carried out the plans of Hyde and his co-conspirators without knowledge of their criminal scheme; were they liable for his acts performed by their procurement and direction? They were acting through him and it was their guilty knowledge and intent that gave character to the act, not his.

To sustain the conviction of Hyde and Schneider the Government must sustain this ruling of the Court of Appeals.

The question thus raised as to venue in conspiracy cases is, we assume, the one upon which the court desired reargument. Its importance in the administration of the criminal law is obvious, and must be the excuse for the elaboration of the argument upon it.

**The elements of the offense of conspiracy.**

What constitutes the offense of conspiracy under section 5440 of the Revised Statutes?

The section is as follows:

If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years or to both fine and imprisonment in the discretion of the court.

Plainly it is not enough, to incur the penalty prescribed, that the parties conspire, but one or more of them must do some act to effect the object of the conspiracy. This was not so at the common law, and it is not so under the penal codes of many of the States, but it is so under section 5440 of the Revised Statutes of the United States, and we are dealing with the offense defined by that section.

We submit that the offense is made up of the corrupt agreement and the overt act to further it, and that it is not complete without the overt act.

The cases abound with statements that the conspiracy is the "gist" of the offense—that is, its main point; or the "gravamen" of it—that is, the substantial cause of the action; and of this there can be no question. Where the conspiracy is to commit an offense, if the offense is in fact committed, punishment may be imposed for that; but under the con-

spiracy charge there may be punishment when the offense intended has not been committed, and even when the intent has not been carried to the extent of constituting a punishable attempt. Where the object is to defraud the United States, the mere attempt to defraud, or even the consummated fraud, may not be an offense. Section 5440 undoubtedly defines a distinctive and peculiar offense, the gist or gravamen of which is the agreement of conspiracy.

Expressions may be found in some of the cases, apparently, to the effect that the offense is complete without the overt act, which is no doubt true at common law but can not be under our statute, and a critical examination of the cases will show that what is in fact decided is only that in an indictment the charge of the conspiracy must be complete in itself and can not be aided by the allegations concerning the overt acts.

In *United States v. Donau* (11 Blatchf., 168) there was a motion to quash the indictment, which was denied. The ground of the motion seems to have been that it did not appear upon the face of the indictment in what manner the act described would tend to effect the object of the conspiracy. It was said here, as it has been in other cases, that the unlawful agreement is the gist of the offense and that the requirement of an overt act is intended only to afford a *locus poenitentiae*. The court said (p. 169):

\* \* \* The offence is the conspiracy. Some act by some one of the conspirators is required, to show not the unlawful agreement,

but that the unlawful agreement, while subsisting, became operative.

And again (p. 170):

\* \* \* The crime is committed when the combination is made, and the act of one of the conspirators is not required by the statute to show the intent. That is inferred from the unlawful act of combining to defraud, or to commit an offense; but the object of requiring proof of some act in furtherance of the unlawful agreement is to show that the unlawful combination became a living, active combination.

If we take this language in its entirety, and not mere detached sentences, it signifies plainly that the mere unlawful combination is not the entire offense. Some quality is added by the overt act. If the combination is stillborn, it is not punishable as a crime. It must be not dead, inert, as it would be if nothing was ever done to further it, but must be living, moving, acting. So the offense consists not simply of the combination, but of the combination in action.

In *United States v. Boyden* (1 Lowell, 266) the indictment was objected to as insufficient because it alleged that the overt acts were done in pursuance of the conspiracy, when it should have alleged, following the language of the statute, that they were done "to effect the object" of the conspiracy. The court said (p. 268):

The rule of pleading which requires a crime created by statute to be laid in the very words of the statute, has perhaps been carried too far in



some cases. But it has no proper bearing upon the second point taken here, because the acts set out are no part of the offence, and may in themselves be innocent. The purpose of the law is that a mere agreement, however corrupt, shall not be punished as a crime, unless it has led to some overt act; and any form of language which shows that such an act has been done to carry out the agreement, is sufficient.

This language is explicit and excludes the idea that the mere agreement constitutes the crime.

In *United States v. Nunnemacher* (7 Biss., 111, l. c. 120) the court said:

A mere agreement or combination to effect an unlawful purpose, not followed by any act done by either of the parties to carry into execution the conspiracy, does not constitute the offense. There must be both the corrupt agreement or combination, and an act done by one or more of the parties to effect the illegal object or design agreed upon, to make the punishable offense under the statute.

Nothing could be plainer than this. Not alone the agreement, but the overt act also, is an element of the offense. And how could it be otherwise, when the penalties of the law are not incurred unless the combination is put in motion by an overt act?

In *United States v. Sacia* (2 Fed. Rep., 754, 757) the court said:

The general definition of a conspiracy is an agreement or combination between two or more persons to effect an unlawful purpose.

The statutory offence, under the laws of the United States, is not complete, however, until an act is done by some of the parties to carry into execution the fraud.

In *United States v. Bayer* (4 Dillon 407, l. c. 410) Dillon, Circuit Judge, said:

\* \* \* By section 5440, conspiracies to commit any offence against the United States are made punishable, provided some act is done to effect the object of the conspiracy. The statute is based upon the common law principle that *conspiring* to commit a crime is of itself criminal, but adds the requirement of an overt act, and the fact that one of the conspirators could not himself commit the intended offence, neither relieves him of guilt nor disables him from cooperating with another person who is able to commit it.

In *United States v. Hirsch* (100 U. S., 33, 34) Mr. Justice Miller said:

The *gravamen* of the offence here is the conspiracy. For this there must be more than one person engaged. Although by the statute something more than the common-law definition of a conspiracy is necessary to complete the offence, to wit, some act done to effect the object of the conspiracy, it remains true that the combination of minds in an unlawful purpose is the foundation of the offence, and that a party who did not join in the previous conspiracy cannot, under this section, be convicted on the overt act.

Here is a recognition of the true significance of what is meant by the *gravamen* of the offense. It is

the essential feature, but not the whole of it. Unlike as at common law, something more than the conspiracy "is necessary to complete the offense."

In *United States v. Britton* (108 U. S., 199) the sufficiency of the indictment was under consideration. Mr. Justice Woods (l. c. 204) said:

The offence charged in the counts of this indictment is a conspiracy. This offence does not consist of both the conspiracy and the acts done to effect the object of the conspiracy, but of the conspiracy alone. The provision of the statute, that there must be an act done to effect the object of the conspiracy, merely affords a *locus penitentiae*, so that before the act done either one or all of the parties may abandon their design, and thus avoid the penalty prescribed by the statute. It follows as a rule of criminal pleading that in an indictment for conspiracy under section 5440, the conspiracy must be sufficiently charged, and that it cannot be aided by the averments of acts done by one or more of the conspirators in furtherance of the object of the conspiracy. *Reg. v. King*, 7 Q. B. 782; *Commonwealth v. Shedd*, 7 Cush. 514.

What is decided here as a rule of pleading is well enough, but certainly there is a practical contradiction in the statement that the offense consists "of the conspiracy alone," and yet if the parties do nothing more they "avoid the penalty prescribed by the statute." In this discussion we must speak in the terms of the penal code, and it knows no such thing as an offense for which there is no penalty. The

authorities cited by Mr. Justice Woods do indeed hold that the conspiracy is alone the crime, but it is to be remembered that, under the common law which governed in each of the cases referred to, an overt act was not necessary to incur the law's penalty.

It may well be doubted that Mr. Justice Woods was intending to define the substantive offense of conspiracy under the statute, for upon the circuit, in the case of *United States v. Dennee* (3 Woods, 47, l. c. 50), he says:

But it seems clear that the statute upon which this indictment is based was intended to relieve the pleader from any supposed necessity of setting out the means agreed upon to carry out the conspiracy, by requiring him to aver some act done in furtherance of the conspiracy, and making such act a necessary ingredient of the offense.

In the case of *Commonwealth v. Shedd*, 7 Cush., 514, the court said, that "the great difficulty in giving effect to the allegation of overt acts in an indictment for conspiracy on a motion in arrest of judgment for insufficiency of the indictment, is this: That overt acts are merely alleged by way of aggravation of the offense, and though alleged they need not be proved, and the alleged conspiracy might be found by the jury without proof of the precise overt acts charged to have been done in pursuance of the conspiracy."

That difficulty does not exist here, for the overt act is a part of the offense, and must be proved, as laid in the indictment. The reason

given in the case just quoted from, why the averment of overt acts can not have effect in the indictment for conspiracy does not apply.

In this connection it may not be amiss to call attention to *United States v. Bradford* (148 Fed. Rep., 413), in which, l. c. 417, Judge Parlange says:

\* \* \* At common law, the conspiracy alone constitutes the offense, without any overt act, and the conspirators can be prosecuted from the instant the conspiracy is formed. But under Rev. St. sec. 5440, no conspiracy can be prosecuted until an overt act is committed. I am fully aware of the statements found in the decisions to the effect that under Rev. St. sec. 5440, the gist of the offense is the conspiracy, and that the overt act is no part of the offense. Mr. Justice Woods so stated in *United States v. Britton*, 108 U. S., at page 204, 2 Sup. Ct., at page 534, 27 L. Ed. 698. It may be interesting to notice, in passing, that it seems the same learned jurist had previously held the reverse in *United States v. Dennee*, 3 Woods, at page 50, Fed. Cas. No. 14,948. But those statements have never been made with regard to or as affecting the question of the statute of limitations here presented. I agree fully that the overt act is not an element of the offense in the sense in which, in criminal law, a specific criminal intent, for instance, is an ingredient of an offense. Such ingredients are, as I believe, always culpable per se; whereas the overt act may be per se, and, considered independently of the conspiracy, a perfectly innocent act. But the indisputable fact re-

mains that an offense under Rev. St., sec. 5440, cannot be prosecuted until an overt act is committed. A criminal offense against the sovereign, which he cannot prosecute and punish, is, it seems to me, a matter which the legal mind cannot grasp.

The common law upon the subject is well stated in *O'Connell and others v. The Queen* (1 Cox's Crim. Cas., 472) by Lord Chief Justice Tindal:

The crime of conspiracy is complete if two, or more than two, should agree to do an illegal thing, that is, to effect something in itself unlawful, or to effect, by unlawful means, something which in itself may be indifferent or even lawful.

That it was an offence known to the common law, and not first created by the statute 33 Edward I, is manifest. That statute speaks of conspiracy as a term at that time well known to the law, and professes only to be "a definition of conspirators."

It has accordingly been always held to be the law, that the *gist* of the offence of conspiracy is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not. (*Reg. v. Best and Others*, Salk. 174; and *Rex v. Edwards and Others*, 8 Mod. 320.)

The very purpose of our statute was to change the common law and to require for the completion of the offense that there be an overt act done by the conspirators in pursuance of the unlawful combination. Cases

at common law may, then, be resorted to for a definition of the term "conspiracy," or for guidance in charging the "conspiracy" in an indictment, but not for a determination of what constitutes the substantive offense of conspiracy under our statute.

In *Pettibone v. United States* (148 U. S., 197) Mr. Justice Fuller dealt with the substantive offense, and, as to what was necessary to constitute it, said (p. 202):

\* \* \* under section 5440, if two or more persons conspire to commit an offence against or defraud the United States, and one or more of them do any act to effect the object of the conspiracy, all the parties are liable to a fine of not more than ten thousand dollars or to imprisonment for not more than two years, or to both. The confederacy to commit the offence is the gist of the criminality under this section, although to complete it some act to effect the object of the conspiracy is needed. *United States v. Hirsch*, 100 U. S. 33.

This is a conviction for conspiracy, corruptly and by threats and force to obstruct the due administration of justice in the Circuit Court of the United States for the District of Idaho, and the combination of minds for the unlawful purpose and the overt act in effectuation of that purpose must appear charged in the indictment.

The confederacy is said by him to be the gist of the offense, but an overt act is necessary to complete it. What is necessary to complete a thing is certainly a part of it, and so the overt act is a part of the offense

of conspiracy as defined by section 5440. It is to be noted that the Chief Justice cites with approval *United States v. Hirsch* (100 U. S., 33).

Nothing inconsistent with this is to be found in *Dealy v. United States* (152 U. S., 539). It was there held simply that the unlawful agreement having been made in North Dakota, the court of that district had jurisdiction of the offense, even though the overt acts were committed elsewhere. It was not held that jurisdiction did not exist where the overt acts were committed.

In *Bannon and Mulkey v. United States* (156 U. S., 464) Mr. Justice Brown noted the change effected in the law by the statute in question. He said (p. 468):

At common law it was neither necessary to aver nor prove an overt act in furtherance of the conspiracy, and indictments therefor were of such general description that it was customary to require the prosecutor to furnish the defendant with a particular of his charges. *Rex v. Gill*, 2 B. & Ald. 204; *Rex v. Hamilton*, 7 Carr. & P. 448; *United States v. Walsh*, 5 Dillon, 58. But this general form of indictment has not met with the approval of the courts in this country, and in most of the States an overt act must be alleged. The statute in question changes the common law only in requiring an overt act to be alleged and proved. The gist of the offence is still the unlawful combination, which must be proven against all the members of the conspiracy, each one of whom is then held responsible for the acts of all. *American*



*Fur Co. v. United States*, 2 Pet. 358; *Nudd v. Burrows*, 91 U. S. 426, 438. It was said by Mr. Justice Woods in *United States v. Britton*, 108 U. S. 199, 204, that "the provision of the statute, that there must be an act done to effect the object of the conspiracy, merely affords a *locus poenitentiae*, so that before the act done either one or all the parties may abandon their design, and thus avoid the penalty prescribed by the statute." If such were not the law, indictments for conspiracy would stand upon a different footing from any others, as it is a general principle that a party cannot be punished for an evil design, unless he has taken some steps toward carrying it out.

*Hyde v. Shine* (199 U. S., 62) involves the indictment in the present case. Dealing with the question now under consideration, Mr. Justice Brown said (p. 76):

The second assignment, that the Supreme Court of the District of Columbia had no jurisdiction of the alleged offense, is based upon the proposition that the conspiracy, if any existed, was entered into either in the Northern District of California or the District of Oregon, and that nothing but overt acts in pursuance of the conspiracy were done in the District of Columbia. Granting that the *gravamen* of the offense is the conspiracy, and that at the common law it was neither necessary to aver nor prove an overt act, *Rex v. Gill*, 2 B. & Ald. 204; *Bannon v. United States*, 156 U. S. 464, 468, an overt

act is necessary under Rev. Stat. sec. 5440 to complete the offense. The language of the section is, "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable," etc.

In *United States v. Kissel and Harned* (218 U. S., 601) it was contended that the offense of conspiracy was complete in the act of agreement or confederation. "It is the bare act of agreeing alone that constitutes the crime," said counsel. And upon this it was argued that the crime was not continuous, although it might be renewed or repeated from time to time. This argument affected the question of limitation. Dealing with it, Mr. Justice Holmes said (p. 607):

The argument, so far as the premises are true, does not suffice to prove that a conspiracy, although it exists as soon as the agreement is made, may not continue beyond the moment of making it. It is true that the unlawful agreement satisfies the definition of the crime, but it does not exhaust it. It also is true, of course, that the mere continuance of the result of a crime does not continue the crime. *United States v. Irvine*, 98 U. S. 450. But when the plot contemplates bringing to pass a continuous result that will not continue without the continuous cooperation of the conspirators to keep it up, and there is

such continuous cooperation, it is a perversion of natural thought and of natural language to call such continuous cooperation a cinematographic series of distinct conspiracies, rather than to call it a single one. Take the present case. A conspiracy to restrain or monopolize trade by improperly excluding a competitor from business contemplates that the conspirators will remain in business and will continue their combined efforts to drive the competitor out until they succeed. If they do continue such efforts in pursuance of the plan the conspiracy continues up to the time of abandonment or success. A conspiracy in restraint of trade is different from and more than a contract in restraint of trade. A conspiracy is constituted by an agreement, it is true, but it is the result of the agreement, rather than the agreement itself, just as a partnership, although constituted by a contract, is not the contract but is a result of it. The contract is instantaneous, the partnership may endure as one and the same partnership for years. A conspiracy is a partnership in criminal purposes. That as such it may have continuation in time is shown by the rule that an overt act of one partner may be the act of all without any new agreement specifically directed to that act.

Conspiracy could not be a continuous offense if the bare agreement to conspire was the whole of the offense, and, as Mr. Justice Holmes says, "exhausted the definition." It might be repeated or renewed, but each repetition or renewal would be a new

offense. It can have continuity only because there is something more of it than the mere agreement or combination. As pointed out by the learned justice, it is rather the result of the agreement than the agreement itself, just as a partnership is not the articles of agreement which prescribe the terms of the partnership, but is the association of the partners in the conduct of business. If nothing was ever done under the articles it could be said that there was an agreement for a partnership, but not that there was an actual partnership. Abandoned by common consent as soon as made, neither rights nor liabilities would exist under it. But there being action under the agreement, there would be an actual partnership, and this would not be repeated or renewed from day to day, but would continue so long as the action continued. And so with the conspiracy. Abandoned at the making of the agreement therefor, nothing ever done under it, there would under the statute be no crime. To say there was a crime, but that it was not made punishable by the statute which defined it, is simply to speak in contradiction, a mere confusion of words, using, as Bacon says, an "unprofitable subtlety, which corrupteth the sense of law." Our courts can deal with acts as crimes only for the purpose of punishment, not as censors to administer mere reproof. "A crime," says Bishop, 1 New Criminal Law, section 32, "is any wrong which the government deems injurious to the public at large, and punishes through a judicial proceeding in its own name." But, there being action under the agreement to conspire, something done to

effect the object of it, we have an actual conspiracy, a partnership in crime, which is not renewed or repeated every day, but continues until its object is effected or all striving to effect the object ceases. The conspiracy condemned and punished by the statute is not a defunct, but a living thing; not a bankrupt, but a going concern. And as it may go from day to day and week to week, always the same thing, so it may go from place to place and not lose its identity in the course of the transition.

#### Venue in conspiracy cases.

When this court decided that a conspiracy might exist at more than one time, it thereby determined that it might exist in more than one place. Each act continues the play, and so may shift the scene.

From the authorities so far considered it results that the unlawful combination exists as a conspiracy so long as and wherever it is active, and therefore it is not barred if anything pursuant to it has been done within the statutory period, and in like manner it may be prosecuted in any jurisdiction within which an overt act has been committed.

As to jurisdiction, this court intimated as much in *Hyde v. Shine, supra*, which was this case on the question of removal here for trial. It was said (p. 76):

\* \* \* As the indictment in this case charges that the conspiracy was entered into in the city of Washington, it becomes unnecessary to consider whether an indictment will

lie within the jurisdiction where the overt act was committed, though there are many authorities to that effect. *King v. Brisac*, 4 East Rep. 164; *People v. Mather*, 4 Wend. (N. Y.) 229; *Commonwealth v. Gillespie*, 7 S. & R. 469; *Noyes v. State*, 41 N. J. Law, 418; *Commonwealth v. Corlies*, 3 Brews. (Pa.) 575.

We will consider these authorities, and many others which are to the same effect, and which, we submit, firmly establish the rule, even in common law cases, and under statutes requiring no overt act, that jurisdiction of the conspiracy exists in any locality, as to all the conspirators, in which an overt act has been committed by any of them, for even at the common law, while the unlawful agreement satisfies the definition of the crime, it does not exhaust it.

Counsel for petitioners in his original brief, page 42, argues that the cases cited in *Hyde v. Shine* do not support the suggestion that jurisdiction exists where any overt act has been committed. He says of *Mather's* case: "He was tried in the county in which he conspired"; of *Noyes's* case: "Noyes was tried in the State where he conspired"; and of *Gillespie's* case: "Gillespie was tried where he conspired."

Agreed. And they were not held for trial where they had not conspired. And Hyde and Schneider may not be tried where they have not conspired.

The question is not, May a conspirator be tried where he did not conspire? but is, Where did he conspire? Counsel for petitioners answers that question by saying that he conspired where he entered

into the conspiracy. We answer it by saying that he conspired wherever anything was done by him, or any of his confederates, to effect the object of their unlawful agreement. That may have been in one place or district or it may have been in every State of the Union. The authorities are overwhelming to the effect that *the conspiracy lives, moves, and has a being wherever it is in action.*

#### English authorities.

The latest textbook to deal with the subject is Russell—Law of Crimes—seventh English and first Canadian edition, published in 1910. It is there said (vol. 1, p. 179):

In an indictment for conspiracy the venue should be laid where the conspiracy was, and not where the result of such conspiracy was put in execution (*q*). But there seems to be no reason why the crime of conspiracy, amounting only to a misdemeanor, may not be tried, wherever one distinct overt act of conspiracy is in fact committed, as well as the crime of high treason, in compassing and imagining the King's death, or in conspiring to levy war (*r*). So in *R. v. Quinn* (*s*), Fitzgibbon, L. J., said: "Some one or more of the people who had the common intention must entertain or manifest it by something done within the venue, and they are entitled to be tried in any one of the counties where that had taken place." And in *R. v. Bowes* (*t*), the trial proceeded upon this principle; and, though no proof of actual

conspiracy, embracing all the several conspirators in Middlesex, where the trial took place, was attempted to be given, and though the individual act of some of the conspirators were wholly confined to other counties than Middlesex, yet the conspiracy as against all having been proved, from the community of criminal purpose, and by their joint cooperation in forwarding the object of it, in different places and counties, the locality required for the purpose of trial was held to be satisfied by overt acts, done by some of them, in prosecution of the conspiracy in the county where the trial was had.

The case referred to in support of the first sentence of the text is *R. v. Best* (1 Salk., 174), and it is there stated that "the venue must be where the conspiracy was, not where the result of the conspiracy is put in execution." There was no such question in the case and nothing of the sort was decided. Salkeld's is not an original report, and is really a digest of the older reports. Indeed, Salkeld, upon his title page, declares his reports to be of cases "alphabetically digested under proper heads." The older books referred to by him, in which the case is to be found, are 2 Lord Raymond, 1167, 6 Modern, 185, and Holt, 151. From these reports it appears that there were various exceptions to the indictment, but none on the ground of venue. The important question was upon the second exception "that it did not appear, that the fact the defendants conspired to charge the prosecutor with was false, and a conspiracy to charge a man with



a fact that is true, is not punishable." Lord Raymond says that "the second exception was stirred twice before in *Hilary* term, and seemed to stick much with the court; and they ordered precedents to be searched." Nothing, however, of venue in these older reports.

The academic contribution by Salkeld to the *Best* case can not weigh heavily against later cases in which the question of venue was dealt with specifically and in its relation to overt acts.

The principal case cited in support of the statement that the venue may be laid in the locality of an overt act is *King v. Brisac* (4 East, 164), decided in 1803.

The first and eleventh counts of the indictment were both for a conspiracy to defraud the King by means of false vouchers. The conspiracy itself was formed upon the high seas, but there were overt acts, committed through the agency of innocent persons, in the county of Middlesex. These acts were the presentation of the false vouchers to the commissioners for victualling the navy. It was contended for defendants by Sergts. Best and Marryat "that it made no difference that the ultimate object and completion of the conspiracy was to operate on shore, as all the acts of the defendants themselves which constituted the offense of conspiracy were committed out of the jurisdiction of the common law." For the Crown, Erskine leading, it was contended that "a conspiracy was an offense not merely resting in the mind, but shewn by overt acts done to carry it into execution; and here the information stated, that in

further pursuance of the conspiracy the defendants caused the false vouchers to be sent to the commissioners for victualling the navy," and the presentation of the papers by third persons, it was insisted, was the act of the conspirators as much as if it had been done by their own hands. The court said (p. 171):

\* \* \* that from analogy, there seems no reason why the crime of conspiracy, amounting only to a misdemeanor, may not be tried wherever one distinct overt act of conspiracy is in fact committed, as well as the crime of high treason in compassing and imagining the king's death, or in conspiring to levy war. In *The King v. Bowes and others* the trial proceeded upon this principle; where no proof of actual conspiracy embracing all the several conspirators was attempted to be given in *Middlesex*, where the trial took place, and where the individual actings of some of the conspirators were wholly confined to other counties than *Middlesex*; but still the conspiracy as against all having been proved from the community of criminal purpose, and by their joint co-operation in forwarding the objects of it, in different places and counties, the locality required for the purpose of trial was holden to be satisfied by overt acts done by some of them in prosecution of the conspiracy in the county where the trial was had.

It is true that the presentation of the vouchers at *Middlesex* was also held to be a substantive offense which would itself support the judgment of convic-

tion, but the ruling as to the venue of the conspiracy has been none the less accepted as the law of England on that question.

The question recurred in *Reg. v. Quinn and others* (19 Cox's Crim. Cas., 78), decided in 1898, and there FitzGibbon, L. J., said (p. 80):

\* \* \* The law as to venue is simple. Some one or more of the people who had common illegal intention must entertain or manifest it within the venue, by something done within the venue, and they are entitled to be tried within any of the counties where that had taken place.

*Reg. v. Connolly and McGreevy* (25 Ontario, 151) was decided in 1894. The indictment was for conspiracy. As to the venue the court said (p. 169):

I take it that the propositions laid down in Starkie's Criminal Pleadings, pp. 30, 31 and repeated in later authors, are too well understood to be canvassed by the defendants. They are thus expressed: "An indictment for a conspiracy may be tried in any county, in which an overt act has been committed in pursuance of the original illegal combination and design. \* \* \*

Archbold's Criminal Pleading, 1910 edition, p. 1420, says succinctly:

The venue may be laid in the county in which the conspiracy actually took place, or in any county in which any one of the defendants did an act in furtherance of the common object of the conspirators.

1 Gabbett's Criminal Law, 257, deals with the matter at greater length:

According to Salkeld's report of the case of Best and others, it was there holden that the venue must be laid where the conspiracy was, and not where the result of the conspiracy was put in execution: But in a late case where the defendants Brisac and Scott, the captain and purser of a man-of-war, were charged with planning and fabricating false vouchers to cheat the crown, it was said by the court, that conspiracy was a matter of inference deduced from certain acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them, and which hardly ever are confined to one place; and that there seemed to be no reason why the crime of conspiracy, amounting only to a misdemeanor, might not be tried wherever one distinct overt act of conspiracy was in fact committed, as well as the crime of high treason in compassing and imagining the king's death, or in conspiring in levying war; and, accordingly, though the only acts proved to be done in Middlesex, where the venue was laid, were those which were done by the defendants *mediately*, through the intervention of innocent persons, namely, the delivery of the vouchers (transmitted through their hands by the defendants) to the commissioners of the victualling, and the application for and receipt of payment there by the holder of one of the bills of exchange mentioned in the information, the planning and fabrication of the vouchers having been upon the high seas, yet the case was held to be well triable in Middlesex.

Counsel for petitioners refers to *Reg. v. Boulton* (12 Cox's Crim. Cas., 87) as implying a different rule, but a reading of that repulsive case will disclose that it did not pass upon the question under consideration.

3 Chitty's Criminal Law, 1142, is also cited. That simply repeats Salkeld's contribution to the *Best* case and clearly misconceives *King v. Brisac* (4 East, 164, 171), which it cites, and of which it says only:

And, as in cases of treason, after the forming a plot has been shown in the shire where the venue is laid, acts done by other conspirators in other counties in pursuance of a common design, may be given in evidence.

The most casual reading of *Brisac's* case shows that something more than a question of evidence was decided.

Fairly considered, there is then no conflict in the English authorities, either textbooks or adjudicated cases.

#### **American authorities.**

The American writers and the American cases are in accord with the English.

Wharton, in his Criminal Law, tenth edition, section 1397, says:

Although technically the place where the conspiracy is entered into is the place of venue, yet it is generally held that the venue may be laid, as to any or all of the conspirators, in the county in which an act was done by any of them in furtherance of their common design; and consequently in this county all the coconspirators are indictable.

And Bishop, in his Criminal Procedure, fourth edition, section 61, says:

\* \* \* the unlawful combination of wills necessary to constitute it, may, under the rule that conspirators renew the conspiracy with every act done by any one of them in carrying it into execution, be prosecuted either in the county where their wills originally combined, or in any other wherein, pursuant thereto, any overt act is performed.

In the American and English Encyclopedia of Law, second edition, volume 6, page 844, it is said:

A court having criminal jurisdiction of the place where an overt act is committed would also have jurisdiction of the conspiracy itself, the overt act in such case being, in legal contemplation, a continuance or renewal of the illegal agreement.

And it is continued and renewed as to all, *whenever and wherever* any member of the conspiracy acts in furtherance of the common design.

In different terms but to the same effect is 8 Cyclo-  
pedia of Law and Procedure, 687:

The venue in an indictment for conspiracy may be laid in the county in which the agreement was entered into, or in any county in which any overt act was done by any of the conspirators in furtherance of the common design. If the conspiracy is entered into within the jurisdiction of the court, the parties thereto are triable in that jurisdiction, notwithstanding the offense was to be committed

without the jurisdiction; and if a conspiracy is formed without the jurisdiction, an overt act committed by one of the conspirators within the jurisdiction is evidence of the crime within the jurisdiction where the overt act is committed.

And now as to adjudicated cases, beginning with those cited in *Hyde v. Shine*.

#### State cases.

How fully the court was justified in its citation of *People v. Mather* (4 Wend. (N. Y.), 229) the following extract, taken from page 259 of the report, will show:

\* \* \* If conspirators enter into the illegal agreement in one county, the crime is perpetrated there, and they may be immediately prosecuted; but the proceedings against them must be in that county. If they go into another county to execute their plans of mischief, and there commit an overt act, they may be punished in the latter county without any evidence of an express renewal of their agreement. The law considers that wherever they act, there they renew, or, perhaps, to speak more properly, they continue their agreement, and this agreement is renewed or continued as to all whenever any one of them does an act in furtherance of their common design.

It does not answer this to say that Mather entered the conspiracy in Orleans County, in which he was indicted, for the jurisdiction of the court of Orleans County would attach to all the conspirators, no matter where they entered the conspiracy. The prose-

cution needs not to be split up as between the confederates, proceeding against each in the county in which he conspired, but, the offense being one, all guilty of it may be included in one indictment; and that indictment may be found and tried in any county in which the offense was committed by any of them.

This case was approved and followed in *People v. Summerfield* (96 N. Y. Supp., 502).

*Commonwealth v. Gillespie* (7 S. & R., 469) was an indictment for conspiring to sell lottery tickets. Gillespie maintained a lottery office in Philadelphia, conducted by Gregory, his agent. Gillespie lived in New York and occasionally visited Philadelphia. Gillespie denied any participation in the sale of the tickets or having done anything in Pennsylvania. The court said (p. 478):

It makes no difference where Gillespie resided, if he conspired to sell *New York* lottery tickets in *Pennsylvania*, with his agent, and the agent effected the act, the object of unlawful conspiracy; he is answerable criminally to our laws. In this offence, there is no accessory. It must be recollected, the conspiracy is a matter of inference, deducible from the acts of the parties accused, done in pursuance of an apparent criminal purpose, in common between them, and which rarely are confined to one place; and if the parties are linked in one community of design, and of interest, there can be no good reason, why both may not be tried, where one distinct overt



act is committed. For he who procures another to commit a misdemeanor, is guilty of the fact, in whatever place it is committed by the procuree. For if *Gillespie* was not accountable to our laws, then this offence would within our State be committed by him with impunity. For that consequence must follow, from its being held to be no crime in him, residing in *New York*, to procure the selling of lottery tickets in *Pennsylvania*, and the argument must rest on the position, that he owed no obedience to these laws, and had been guilty of no offence in contravening them.

*Gillespie* was indeed tried where he conspired, but not where he was personally present when conspiring. *Gillespie* being in *New York* conspired with *Gregory* being in *Pennsylvania*, and *Gillespie* actually in *New York* was held to be conspiring in *Pennsylvania* because his confederate *Gregory* was doing something in *Pennsylvania* to effect the object of the conspiracy.

*Commonwealth v. Corlies* (3 Brews. (Pa.), 575) is conceded by counsel for petitioners to be in point, but it is no more so than the *Gillespie* case. *Corlies* conspired with one *Clark*, they both being in *New York*, to practice a fraud upon one *Werner* in *Philadelphia*. *Corlies*, in *Philadelphia*, did something to effect that common purpose. *Clark* was never in *Philadelphia*, but it was held that the conspiracy existed in *Philadelphia*. The court said (p. 578):

\* \* \* In conspiracy, the offence undoubtedly is the combination; when that is established, the crime is complete. The overt

act is evidence of the crime. *And it is evidence of the crime within the jurisdiction where the overt act is committed.*

This Court of Quarter Sessions may not be very high authority, but the Supreme Court of Pennsylvania later in *Commonwealth v. Bartilson* (85 Pa. Stat., 482, l. c. 489) stated the law to the same effect:

\* \* \* For, as before said, the overt acts are the evidence from which a conspiracy may be inferred. Hence it is that while as a general rule in criminal cases the venue must be laid in the county in which the offence was committed, yet *in conspiracy it may be laid in any county in which an overt act has been done by any one of the conspirators.*

In *Noyes v. State* (41 N. J. L., 418) Noyes and others were indicted for a conspiracy to fraudulently appropriate the money and property of the New Jersey Mutual Life Insurance Co. The conspiracy was formed in New York, and was fully carried out there except as to the manual delivery of the property, which was in New Jersey. Stedwell, the president of the company, had executed and delivered an assignment to Noyes in New York. Noyes went to New Jersey and there took possession, being assisted by clerks of the company, who acted innocently in the matter and responsive to directions given by Stedwell from New York.

The court held that the acts of the clerks were to be taken as the acts of Stedwell, and so found a conspiracy in New Jersey between Noyes and Stedwell.

There is a discrimination here, not made in any other case, between venue and jurisdiction. The court accepts cases like *People v. Mather*, *supra*, as presenting a mere question of venue as between different counties of the same State, but where different States or sovereignties are concerned holds against the jurisdiction except as to persons who either personally or by an agent actively and directly participated in the conspiracy within the State. We are not concerned with the distinction here, for, as the New Jersey court uses the terms, we are dealing with venue rather than with jurisdiction.

In the recent case of *State v. Nugent* (77 N. J. L., 84, l. c. 86) the court announces that—

\* \* \* The rule is that conspirators may be indicted either in the county in which they first entered into the unlawful combination, *or in any other county in which, in pursuance of it, an overt act was performed.*

*Bloomer v. State* (48 Md., 521, l. c. 535) thus sums up the matter:

Combinations and conspiracies can only be established by a number of indefinite circumstances which vary according to the objects to be accomplished. Their fields of operations sometimes embrace various States, as the necessities of the conspirators require. Yet the State in which all or any of them reside, and in which the conspiracy originated or was conducted, has ample jurisdiction; otherwise the offence would be committed with impunity.

In *People v. Arnold* (46 Mich., 268, l. c. 275) the court, by Cooley, J., said:

It is also objected that the defendant was informed against and tried in the county of St. Joseph while the conspiracy is alleged to have been formed in Calhoun; so that the defendant has been deprived of his right to a trial by jury of the vicinage. But the overt act was committed in St. Joseph; and according to the common-law precedents the misdemeanor may be tried wherever an overt act in pursuance of the conspiracy takes place. If a man at one end of the State conspires with others to defraud a person at the other extreme, and the fraud is actually committed, the question of hardship as between him and the prosecutor in requiring the trial for the conspiracy to be had at the place of residence of the one rather than at that of the other, presents considerations which obviously are not at all in favor of the accused. But the rule is clear and no doubt has been wisely settled. *The King v. Brisac*, 4 East 164:

*Insurance Cos. v. State* (75 Miss., 24) was an indictment under a statute against trusts and combines, and the indictment being demurred to, among other grounds, because the venue was not properly laid, the court, l. c. 34, said:

As to the second ground, it is only necessary to say that, in an indictment for conspiracy, the venue may be laid "either in the county of the original unlawful confederation or in that wherein any overt act pursuant

thereto transpired." Bishop's Directions and Forms, sec. 281; 2 Bish. Crim. Proc., sec. 236. We think the venue is sufficiently laid in the county of Lauderdale, where the overt acts occurred. See, clearly to this point, 1 Bish. Crim. Proc., sec. 61, p. 34; *People v. Mather*, 21 Am. Dec., p. 147; *Ex parte Rogers*, 38 Am. Rep., p. 654; *Noyes v. State*, 41 N. J. Law, pp. 422, 423. The second ground of demurrer is, therefore, untenable.

In *State v. Hamilton* (13 Nev., 386, l. c. 393) it is said:

Where several persons confederate together for the purpose of committing a crime which is to be accomplished in pursuance of a common plan, all who do any act which contributes to the accomplishment of their design are principals, whether actually present at its consummation or not. They are deemed to be constructively present though in fact they may be absent. (1 Bishop Cr. Law, sec. 650.)

*International Harvester Co. v. Commonwealth* (137 Ky., 668) was an indictment for entering into a pool, trust, combine, etc., for the purpose of regulating, controlling, and fixing the price of merchandise, etc. On the question of venue the court said (p. 674):

\* \* \* If the conspiracy (and such the act is denominated by the statute) is entered into beyond the jurisdiction of Kentucky, the fact alone of such conspiracy, whatever its purpose, is not punishable in this state. But if the conspirators, in furtherance of their scheme, carry it into effect in Kentucky, that

moment the offense is committed here. The conspiracy, wherever and whenever entered into, becomes the efficient cause of a result in this state, the culmination of which rounds out a completed act, beginning with the conspiracy to raise prices above their real value, and ending with the accomplishment of that purpose. It is one continuous act. It is like the case where the shot being fired from without the state takes effect in the state, resulting in homicide. The actor may be without the jurisdiction of the courts of this state, and so was his act alone in discharging his gun, but when the result in this state constitutes an offense here, the whole transaction, being necessarily one act, is cognizable by the courts of this state as if every part of the act transpired here. So it is not material where the conspiracy was entered into, if the fact to be investigated is the result. It is relevant to prove, and it may be necessary to prove the fact of the conspiracy. That may be done either by witnesses who heard it, or who produce documentary evidence of it, or by circumstances from which it may be inferred.

In *Pearce v. Territory* (11 Oklahoma, 438) the court, l. c. 446, said:

The true nature of the crime of conspiracy is well illustrated by a consideration of the rule of pleading which requires the venue in a criminal case to be laid in the county where the offense was committed in connection with what is generally regarded as an exception to

this rule, namely, that in indictments for conspiracy—an offense constituted by the mere agreement, wholly independent of overt acts done pursuant thereto—the venue may be laid in any other county in which it can be proved that an overt act was done by any of the conspirators in furtherance of their common design; as, where a conspiracy was formed at sea, and an overt act done in the county of Middlesex, it was held that the venue was properly laid in that county. (*Rex v. Brisac*, 4 East 164). This is, in strictness, because the law regards the agreement, not the mere act of agreeing, but the agreement itself, existing and influential, as the crime; and if the conspirators, or any of them, go into another county and there commit an overt act, such act is regarded as a renewal or continuance of the illegal combination, and proof of its existence where the overt act is committed.

This is in exact accord with what is said by Mr. Justice Holmes in the *Kissel* case. It is not the mere agreement, but the agreement in action; not the agreement to conspire, but the resulting conspiracy, which constitutes the crime.

In *Ex parte Rogers* (10 Texas Appeals, 655) the indictment was for a forgery as having been committed within the State of Texas, although in fact committed in Illinois, pursuant to a conspiracy formed in the State of Texas. The authorities cited by us are reviewed at length and approved, and the principle declared by them applied to the case in hand.

In the later case of *Raleigh v. Cook* (60 Texas, 438, l. c. 441) the court said:

The present offense is in the nature of a conspiracy, and it is a well settled principle of criminal law that such an offense is deemed to have been committed where any overt act in pursuance of the unlawful combination is performed, by any one of the conspirators, or any other person at their instigation. In point of law the conspiracy is considered as renewed with every act done in carrying out the plan.

As against these authorities we do not find in the brief of counsel for petitioners any case from any State holding that the locality of the offense of conspiracy is only in the place where the conspiracy was entered into or formed.

#### **Federal authorities.**

The greater number of the Federal cases are in harmony with the State adjudications.

In *United States v. Newton* (52 F. R., 275) the District Court for the Southern District of Iowa held expressly that the overt act gave jurisdiction. In *United States v. Greene* (115 Fed. Rep., 343) the District Court for the Eastern District of Georgia quoted with approval what was said by Marcy, J., in *People v. Mather* (4 Wend. (N. Y.), 229). In *Arnold v. Weil* (157 Fed. Rep. 429) jurisdiction was held to attach alike in either district, where the conspiracy was formed or where the overt acts were done.

The point was expressly ruled by the Court of Appeals for the Eighth Circuit in *Robinson v. United*



*States* (172 Fed. Rep., 105), in which, after citing and quoting from some cases at common law, the court, l. c. 108, said:

If this was the law of venue in conspiracies at common law, where proof of an overt act was not necessary to show a completed offense, the same rule can be urged with much greater force under section 5440, Rev. St. U. S., as the offense described therein for all practical purposes is not complete until an overt act is committed.

And in *Ex parte Hoffstot* (180 Fed. Rep., 240) Judge Holt, l. c. 241, 242, said:

The crime of conspiracy, with which the defendant is charged in the indictment, is one of which he may be guilty without ever having engaged in the conspiracy or done anything in pursuance of it while physically in the State of Pennsylvania. The charge is, in substance, that he took part in a conspiracy to bribe members of the Pittsburg council to designate certain banks, and among others the one of which he was president, to be depositories of the city money. He may have engaged in such a conspiracy by letters, or telephone conversations, or through agents by whom he, while in New York, communicated with others. He may therefore have been subject to indictment in Pennsylvania without ever having been physically present in that state. There are various cases in which a person may do something in one state which will result in a crime committed in another state, as when a

shot is fired in one state which kills a man in another, or property is obtained from one state by false pretenses uttered in another, or a libel is written in one state and published in another. In such cases usually the criminal may be indicted and tried either in the state in which he did the act which caused the crime or in which it was ultimately completed.

That conspiracy was a continuing offense and was continued by overt acts was held by Judge Parlange, of Louisiana, in *United States v. Bradford* (148 Fed. Rep., 413), by Judge De Haven, of California, in *United States v. Brace* (149 Fed. Rep., 874), by Judge Quarles, of Wisconsin, in *United States v. Barber* (157 Fed. Rep., 889), by the Court of Appeals for the Eighth Circuit in *Ware v. United States* (154 Fed. Rep., 577), the Court of Appeals for the Ninth Circuit in *Jones v. United States* (162 Fed. Rep., 417), and the Court of Appeals of the District of Columbia in *Lorenz v. United States* (24 App. D. C., 337).

There are some cases to the contrary. *United States v. Owen* (32 Fed. Rep., 534) holds that the crime of conspiracy is completely consummated in the agreement and the first overt act pursuant thereto. The decision denies the quality of continuity to the crime. It is, of course, overruled by the *Kissel* case. In *United States v. McCord* (72 Fed. Rep., 159) the holding was the same as in the *Owen* case, and it is subject to the same criticism. If *Ex parte Black* (147 Fed. Rep., 832) can be said to be in point, it was overruled by the judge who decided it in *United States*

*v. Barber, supra.* We have no fault to find with it so far as it decides that where the overt act alleged was done after the conspiracy was consummated it was ineffective as an overt act to continue the offense. *United States v. Biggs* (157 Fed. Rep., 264) follows *United States v. Owen, supra*, with the result that must ensue when the blind are led by the blind. Of *United States v. Kissel* (173 Fed. Rep., 823) it needs only to be said that it was reversed by this court.

No case in the District Courts or Courts of Appeals, which we have found, contravenes the principle which makes the locality of an overt act a locality of the conspiracy, except such as are clearly against the *Kissel* case.

The cases cited by us to support the jurisdiction of the District Court were, some of them, indeed most of them, cases of conspiracies at common law, no overt act being required to complete the offense. But in every case we have examined there were overt acts, and the conspiracy was proved by them. Without overt acts a conspiracy would never manifest itself, and could be proven only by confession of a conspirator. The requirement of an overt act adds really nothing to the burden of a prosecution conducted in good faith, but may serve as a protection against a false and malicious charge. The cases are few in which there was any direct evidence of the agreement to conspire, and in many of the cases we venture to say there was in fact no definite and express agreement. The agreement is often a tacit, implied one, inferred

from the overt acts of the parties concurring to a common purpose. The place of the agreement itself in any case would be difficult to determine. If the agreement must be inferred from the concurring acts of the parties, why should the place of one act rather than that of another be inferred to be the place of the agreement? If the agreement is express, the difficulty may be the greater. Deliberate conspirators would be very apt to go out of the jurisdiction to make the agreement for a conspiracy that is to be consummated within, and if the venue for the trial of the offense is fixed at the place of making the agreement, evasion of all penal consequences would be easy. May men combine to defraud the United States and escape punishment because the agreement to perpetrate the fraud was made in Canada? Except in the cases, of which we have found no examples, where the agreement for the conspiracy was abandoned as soon as made, and the conspirators none the less proclaimed their guilt, whether or not the law requires an overt act to complete the offense, such are the limitations upon human power that only through its overt acts can we come to the knowledge of a conspiracy; only through them can we determine its time, place, and plan; only through them can we describe it in the indictment, and only through them can we prove it at the trial. From the nature of the offense, from the necessities of the case, we derive the law that the conspiracy exists when we see it and where we see it, and that is when and where it discloses itself by its

overt acts; and so if it thus discloses itself within the period of limitation there is no bar of time against the prosecution; and likewise if it so discloses itself within the jurisdiction of any court there is no bar of venue against its prosecution in that jurisdiction.

### **Section 731 R. S.**

This being the rule at common law it must be so in Federal jurisprudence, for by the express terms of the statute, section 5440, the crime is not complete without an overt act, and by the express terms of section 731 R. S. it is provided that:

When any offense against the United States is begun in one judicial circuit and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein.

It is obvious that by the word "circuit" in the second line of the section "district" is intended.

This section as to venue is broad, and applies to crimes of every class. If the acts which constitute the offense in any case were done in different districts it may be prosecuted either where it was begun or where it was completed.

The provision is, however, peculiarly applicable to cases of conspiracy, for it was originally enacted as a part of the same section of the statute which defined

the offense of conspiracy—that is, section 30 of the act of March 2, 1867 (14 Stat. 484)—viz:

*And be it further enacted,* That if two or more persons conspire either to commit any offence against the laws of the United States, or to defraud the United States in any manner whatever, and one or more of said parties to said conspiracy shall do any act to effect the object thereof, the parties to said conspiracy shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars and to imprisonment not exceeding two years. And when any offense shall be begun in one judicial district of the United States and completed in another, every such offense shall be deemed to have been committed in either of the said districts, and may be dealt with, inquired of, tried, determined and punished in either of the said districts, in the same manner as if it had been actually and wholly committed therein.

In the present case it is to be presumed, from all the evidence, that the offense was begun in California, but it was not and could not be completed there. The agreement to conspire, whether express or implied, may have its locality there, but to effect its object something must be done in the District of Columbia. The fraud upon the United States could be consummated here, and only here. The application to the United States for the exchange of lands gotten by the conspirators from the State of California

and lying within the limits of forest reservations, for lands of the United States lying without such reserves, must be made to the authorized representatives of the United States here in the Land Office, and the exchange itself must be made here. And so Dimond was here, whether a guilty or an innocent agent, not casually, but for the very purposes of the conspiracy, to do those acts in the Land Office, which were necessary to be done in order to induce that exchange of lands which constituted the fraud upon the United States, the very object of the conspiracy. Every act of Dimond here was in the language of section 5440 an "act to effect the object of the conspiracy."

#### **Constitutional provisions.**

As we read the argument of counsel for the petitioners it is to the effect that the rule as to venue declared by the adjudicated cases, and by section 731 of the Revised Statutes, contravenes the Constitution of the United States, section 2 of Article III, and the sixth article of amendment.

The first of these provides:

The trial of all crimes \* \* \* shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

And the other:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public

trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation.

It is to be observed that the venue of the trial is not fixed at the residence of the accused, nor yet at the place where he was when the crime was committed, but at the locality of the crime itself.

That the act of thirty-fifth Henry the Eighth, revived by the British Parliament against the American colonists, offended the principle declared by the Constitution admits of no doubt, for it authorized trial of acts denounced as treason in such shire and county of England "as it shall please the King's Highness to appoint," and this "wheresoever they [the acts denounced as treason] shall happen so to be done or committed." It conferred jurisdiction at the King's pleasure upon the courts of England, *regardless of the place of the alleged offense*. Against this the colonists made righteous objection that it was an attempt "to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws." But no such principle is contended for here. We insist here only upon a jurisdiction which completely fulfills the requirement of the Constitution that "the trial of all crimes \* \* \* shall be held in the State where the said crimes shall have been committed," and, as expressed in the sixth article of amendment, "by



an impartial jury of the State and district wherein the crime shall have been committed." But the question constantly recurs, and it is the question to be answered, Where was the crime committed?

Among the abuses incident to trial at a place distant from the place of the offense were that the accused was dragged far away from his family, friends, and business, denied the assistance, countenance, comfort, and counsel necessary to support him under such circumstances, subjected to great and ruinous expense, deprived of the advantage his reputation and standing among his neighbors gave him, and of the peculiar facilities existing in the place of the offense for examining all its circumstances. Ordinarily, at that time, but even then not always, the place of a man's residence was the place of the offense alleged against him. As the conveniences of travel and the occasions for it increased it happened with more and more frequency that a man was charged with crime as having been committed by him away from home. He might very much prefer, and it might be much to his advantage, to be tried in the county or district of his home, but he was not entitled to be tried there, not even by consent of the Government, for the constitutional requirement was for trial at the place of the offense.

The means and facilities for communication and correspondence between distant places increased with the years. The mail, the telegraph, and the telephone enabled a man in one district to act in combination with a man in another district without

any personal meeting, and thus they might conspire to commit a crime and together commit that crime. Without conspiracy, and with guilty purpose only on his own part, the man in one district might, through the agency of the man in another district, commit a crime in that other district. Or, again, the offense might be of such nature that it could not be consummated in one place, but, beginning in one, moved to another for completion. The bull of Sir Boyle Roche remained a truism, that "a man can't be in two places at once, barring he's a bird," but it became just as true that he might act in two places at once without being a bird. He might act by himself in one place and at the same time by an agent or by mere mechanical instrumentality in another, the act by himself in the place of his presence and the act by his agent or the mechanical instrumentality in the distant place concurring to constitute an offense. Now, where is the place of that offense? Or, beginning a series of operations, the scene of which was in different districts, and all of which were necessary to constitute the offense, where was its place?

These questions are not answered in the constitutional provisions cited by counsel, and we must look for the answer to the general principles of our jurisprudence. We have endeavored to show from the cases expounding that jurisprudence what that should be, and that in cases of conspiracy, even at common law, it is wherever the conspiracy is in action.

If this court has not explicitly made the answer in cases of conspiracy, it has done so in effect in other cases arising under section 731, which, for purposes of trial, recognizes that an offense may have more than one place.

The constitutionality of a like provision contained in the Elkins Act (32 Stat., 847) was directly challenged in *Armour Packing Co. v. United States* (209 U. S., 56). It was provided that the offense of obtaining rebates might "be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which the transportation may have been conducted," and this, as conferring venue upon the districts through which the transportation may have been conducted, was said to violate the sixth article of amendment. Delivering the opinion of the court, l. c. 76, Mr. Justice Day said:

\* \* \* But the constitutional provision does not require the prosecution of the defendant in the district wherein he may reside at the time of the commission of the offense, or where he may happen to be at that time, provided he is prosecuted where the offense is committed. The constitutional requirement is as to the locality of the offense and not the personal presence of the offender.

\* \* \* \* \*

To say that this construction may work serious hardship in permitting prosecutions in places distant from the home and remote from the vicinage of the accused is to state an objec-

tion to the policy of the law, not to the power of Congress to pass it.

In the removal case of *Haas v. Henkel* (216 U. S., 462, 473) Mr. Justice Lurton said:

Haas was arrested upon a warrant duly sworn out, charging him with offenses against the United States, committed within the District of Columbia. Copies of the indictments duly returned by a grand jury were put in evidence. That made a *prima facie* case, requiring detention until an order of removal could be applied for and issued. Haas insisted upon his right to be tried in the district of his residence, and complained, with more or less justice, of the expense and hardship incident to a trial in the District of Columbia. But there is no principle of constitutional law which entitles one to be tried in the place of his residence. The right secured by Art. III, section 2 of, and the Sixth Amendment to, the Constitution is the right of trial in the district "Where the crime shall have been committed." If, therefore, Haas committed a crime against the United States in the District of Columbia he had neither legal nor constitutional right to object to removal to the district where the trial was to be had. *In re Palliser*, 136 U. S. 257, 265.

**Personal presence not essential to determine locality of offense.**

There remains distinctively the question whether any offense by Hyde and Schneider was either committed or completed here because of the acts of Di-

mond, done by him without knowledge that they were done to effect the object of the corrupt agreement between Hyde and Schneider.

The answer is that the acts of Dimond were the acts of Hyde and Schneider, done by them and by them alone so far as any criminal quality in them was concerned. Dimond, individually unconscious of any fraudulent purpose or effect in his acts, was not committing any crime nor completing one, but as the unconscious agent, as the alter ego, of Hyde and of Schneider, he was on their behalf and for them completing a crime begun by them in California.

#### **State authorities.**

In *People v. Adams* (3 Denio, 190) the defendant was indicted for obtaining money under false pretenses. Adams was in the State of Ohio and committed his offense through innocent agents in the State of New York. He was held guilty in the latter State. The court, l. c. 206, said:

\* \* \* And of this crime, thus committed within the limits of this State, taking the facts charged and admitted to be true, the defendant, in my opinion, was plainly guilty, although at the time of its perpetration he was out of this State and within the limits of the State of Ohio. The intent to cheat was his; the fraudulent contrivance was his; and by agents, acting within this State, for him and under his authority and guidance, themselves innocent of all fraud, were the false pretenses used and the crime fully consummated. He and he alone was therefore the guilty party.

The case of *Rex v. Brisac* was again cited and its principle applied.

The case of *Commonwealth v. Harvey*, 8 American Jurist (Mass.), 69, is also in point. There the defendant, a resident of New York, forged a draft in Albany and placed it in the hands of a broker to be forwarded to Boston, Mass., where the draft was cashed and the proceeds remitted to the defendant, who did not, during the transactions, leave the State of New York. The issue was the utterance of the forgery in Boston. The court held it was uttered in Boston by the defendant from Albany, N. Y., through the medium of an *innocent agent*, and that the defendant was guilty in Massachusetts.

In *State v. Grady* (34 Conn., 118) the court, in applying the same principle, among other things, said (p. 130):

\* \* \* There has been no case in our courts where the prisoner has been indicted, and acquitted because, although a party to the offense, he was not in the State at the time it was committed. On the other hand, in *Barkhamsted v. Parsons* (3 Conn., 1,) an inhabitant of Massachusetts was holden punishable here for an act done by his agent; and Chief Justice Hosmar said: "The principle of common law, *qui facit per alium facit per se*, is of universal application, both in criminal and civil cases; and he who does an act in this State by his agent, is considered as if he had done it in his own proper person."

See also *Ex parte Rogers* (10 Tex. App., 655, 667-671), where the question is discussed *in extenso* and numerous authorities are cited, including *Rex v. Brisac, supra*.

*McKee v. The State* (111 Ind., 378) was an indictment of four persons for conspiracy. One of them was tried and convicted. At the trial it appeared that the parties charged employed an agent who aided them in the prosecution of their unlawful scheme, and the agent was permitted to testify as to certain overt acts committed by him. It was contended on appeal that this was error, because the acts of the agent were done subsequent to the conspiracy and in the absence of the convicted defendant. The court held (pp. 382, 383):

After the joint design was once fairly established, every act done in pursuance of the original purpose, *whether by one or more of the conspirators, or by their agent*, was a renewal of the original conspiracy.

\* \* \* \* \*

One who employs an agent to assist in the execution of a criminal act, is equally guilty of the acts of the person employed, as if he had himself performed them. (1 Whart. Crim. Law, sec. 247.)

#### Decisions of this court.

The question has been repeatedly passed upon by this court.

In *Palliser's case* (136 U. S., 257) the offense charged was an attempt to induce a postmaster to

sell postage stamps on credit, and it was committed by Palliser, who was in New York, writing a letter to the postmaster at Black Hall, Conn., in and by which he made the offensive proposition. Palliser posted his letter in New York, and it came to the postmaster in Connecticut by regular course of mail, the agencies of which were entirely innocent of any guilty intent. Palliser was indicted in Connecticut, and resisted removal from New York on the ground that he was entitled to be tried in New York, the place of his offense. Many authorities are reviewed and the conclusion reached that the offense was committed in Connecticut when, by the delivery of the letter, the evil offer was communicated to the postmaster. Whether it was also committed in New York was not expressly decided.

In *Horner v. United States* (143 U. S., 207) the indictment was found in Illinois and the act constituting the offense was the delivery to the person addressed at Belleville, Ill., in the regular course of mail delivery, of a letter posted by Horner in the city of New York, Horner not leaving the city of New York, nor doing anything more to cause the letter to be delivered in Illinois than placing it in the mail at New York. In *habeas corpus* proceedings instituted to prevent removal to Illinois for trial, the district judge held, l. c. 211, and this court approved, that—

\* \* \* under the fifth count, although the voluntary act began in New York, by deposit in the mail, the offence of causing the delivery by mail could not be consummated except by



delivery to the person and at the place intended; that, in whatever way Horner might have caused such delivery to be made, either by deposit in the mail at New York, or elsewhere, and wherever his voluntary act might have begun, the offence under the third clause of the statute, charged in the fifth count of the indictment, was not committed until the delivery was made; that, when such delivery was made, the offence was committed, and was committed at the place where the delivery was made, in accordance with the intent of Horner and by his procurement, although it might perhaps also be deemed to have been committed at the place of deposit; and that the offence charged in the fifth count was, therefore, triable in Illinois, under the Constitution of the United States as well as section 731 and section 3894 of the Revised Statutes, as amended; citing *In re Palliser*, 136 U. S. 257.

In *Benson v. Henkel* (198 U. S., 1) bribery of an official in the District of Columbia, by sending the money to him by mail from California was held to be cognizable in this District.

*Hyde v. Shine* (199 U. S., 62) has already been considered. It recognizes the abuse of power which is possible when there may be a choice by the Government of the place of trial, but the possibility of the abuse does not disprove the existence of the power. What is said in both majority and minority opinions as to the hardships involved in removing residents of California to the District of Columbia for trial, when trial might have been had in Cali-

fornia, is thoroughly appreciated; and it is to be presumed that those responsible for it believed that they had to deal with one of those "exceptional cases where the circumstances seem to demand that this course shall be taken."

In *Burton v. United States* (202 U. S., 344) the defendant was charged with having agreed, while a Senator of the United States, to receive compensation for services to be rendered to the Rialto Grain & Securities Co. before the Post Office Department, in Washington. The indictment was found in St. Louis, where the Rialto company had its office. The facts alleged were that Burton was journeying with the general counsel of the company in Illinois on the way to Chicago, and that on this journey the situation of the company was explained to him; that he proposed to become counsel for the company for a limited time, at a stated salary per month, and was told, and he contemplated, that his offer would be submitted to the company at St. Louis on the return to that city of the general counsel; that this was done by the general counsel; that the proposal was accepted and notice of the acceptance sent to Burton in Washington from St. Louis by a representative of the company. Under the law the company, or its representative, was not guilty of any offense in agreeing to give compensation for the proposed service. It was there earnestly contended that "an individual could not, in law or within the meaning of the Constitution, commit a crime within a State in which he is not physically present at the time the crime is

committed." The court, after reviewing the *Paliser* case, said (l. c. 389):

It can not be maintained, according to the adjudged cases, that the personal absence of the defendant Burton from St. Louis, at the time his offer was accepted, and when the agreement between him and the company was completed and became binding, as between the parties, deprived the Federal court there of jurisdiction. He sent his offer to St. Louis with the intent that it should be there accepted and consummated. Having been completed at that city in conformity with the intention of both parties, an offense was, in the eye of the law, committed there, and when the court below assumed jurisdiction of this case it did not offend the constitutional requirement that a crime against the United States shall be tried in the State and District where it was committed.

*Burton's* case goes beyond the requirements of the case at bar. The act done at St. Louis was not *Burton's* act done for him by his agent, but was the independent act of a third party acting in his own interest and under his own volition; but because it was invited by *Burton*, and because, concurring with what he had done, the illegal agreement resulted, and because the concurrence was in St. Louis, jurisdiction was held to attach there.

*Strassheim v. Daily* (221 U. S., 280) arose under extradition proceedings. It was necessary to determine (1) whether *Daily* had committed a crime in Michigan, and (2) whether he was a fugitive from the

justice of that State. In dealing with the first question, l. c. 284, Mr. Justice Holmes said:

If a jury should believe the evidence and find that Daily did the acts that led Armstrong to betray his trust, deceived the Board of Control, and induced by fraud the payment by the State, the usage of the civilized world would warrant Michigan in punishing him, although he had never set foot in the State until after the fraud was complete. Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power. *Commonwealth v. Smith*, 11 Allen, 243, 256, 259. *Simpson v. State*, 92 Georgia, 41. *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 356. *Commonwealth v. Macloon*, 101 Massachusetts, 1, 6, 18. We may assume therefore that Daily is a criminal under the laws of Michigan.

The case of *United States v. Burr* (25 Fed. Cas., 55) is cited by counsel, but is not in point. As will be seen by reference to the indictment, which may be found beginning on page 87, it was not against Burr and others, but against Burr alone, and was not for conspiracy to commit treason, but was for the consummated crime of treason, committed in gathering with others at Blennerhassett's Island, and there actually ordaining, preparing, and levying war against the United States.

Treason is defined in section 3 of Article III of the Constitution, and "consists only in levying war against them [the United States], or in adhering to their enemies, giving them aid and comfort," and conviction of the offense may not be had "unless on the testimony of two witnesses to the same overt act, or on confession in open court."

The charge against Burr was under the first branch of the definition. In his opening statement for the Government (p. 89), Mr. Hay said: "The offence charged in the indictment was levying war against the United States." As the court construed the indictment it alleged the actual presence of the accused at Blennerhassett's Island. "The court understands it to be directly charged that the prisoner did assemble with the multitude, and did march with them" (p. 173). It was held by the court (p. 172) that Burr could be convicted only on this overt act. "With respect to this prosecution, it is as if no other overt act existed. \* \* \* Though the overt act may not be itself the treason, it is the sole act of that treason which can produce conviction."

The doctrine of constructive presence was considered, but with reference to the crime of treason as defined by the Constitution and the overt act charged in the indictment. There is no intimation that the doctrine has no place in our criminal jurisprudence. The decision in the case was that there was "no testimony whatever which tends to prove that the accused

was actually or constructively present when that assemblage [on Blennerhassett's Island] did take place; indeed, the contrary is most apparent" (p. 177). Whether a charge of actual presence could be established by proof that Burr procured the assemblage was not determined. "If, however," the Chief Justice said, "this point be established, still the procurement must be proved in the same manner and by the same kind of testimony which would be required to prove actual presence." And this proof was wanting.

*We have to do with a conspiracy which involved of necessity both the State of California and the District of Columbia in its operations. It was as much at home in the one locality as in the other. It could not succeed unless it was active in each; and, considering what must be done in the respective localities, it may not without reason be said that the important thing was to be done here; and certainly here the proposed exchange of lands was considered and passed upon, and the patents by the United States for the so-called lieu lands issued. Whatever was done in the matter in California or here was done by Hyde and Schneider, either by themselves or by their agent acting for them and in their behalf. The conspiracy was theirs and all its operations were their acts, and they are amenable for them wherever those acts were done; and as some of them essential to effect the object of the conspiracy were done here, the court of the District had jurisdiction of the conspiracy.*

## THE STATUTE OF LIMITATIONS.

It was insisted by the petitioners that the offense was barred as to the conspiracy generally, and especially as to the defendant Schneider, (Seventh and thirty-fourth to thirty-sixth assignments.)

The contention in behalf of all the defendants was that the conspiracy was formed and the first overt act committed more than three years prior to the finding of the indictment. That operations continued to a time within the statute is evident from a glance at the indictment. All the overt acts alleged are within the three-year period. This question is settled by *United States v. Kissel, supra*.

The case as to Schneider stands upon a distinctive footing. The evidence as to him tends clearly to show that he was a party to the conspiracy more than three years before the indictment. That Hyde and Schneider operated together in acquiring the school lands, for the fraudulent purpose and by the illegal methods alleged in the indictment, in both California and Oregon, was abundantly proved. There was a great mass of evidence on this subject, and it was all of the same tendency and effect. It was likewise shown that Schneider performed acts in aid of the fraudulent scheme after his return from Oregon, as well as before he went to that State. He prepared maps in Hyde's office intended for use in furtherance of the scheme in connection with proposed forest reserves in California, and they were so

used. He prepared and assisted in preparing other papers in Hyde's office to be used in connection with forest lieu selections involved in the scheme, and the papers were so used. (R., 208, 215-216, 339, 602-603, 747-748, 750, 751, 755, 762, 763-766.) He filled out blank forms of different kinds of papers in Hyde's office to be used in the business, and at all times gave his services to help on the conspiracy whenever they were needed or called for.

*In the summer or fall of 1902 he made a partial disclosure of the conspiracy to the Government. There is nothing to show a repudiation of or withdrawal from the conspiracy by him before that time, and there is evidence of active participation to a time within the statute. In view, however, of the instructions of the court to the jury, the Government can not depend upon this last evidence for an affirmation of the judgment. The court charged the jury as follows:*

The same principle of agency is to be applied to the question of time. If Schneider was a member of the conspiracy back of the three-year period, and it was a part of that conspiracy that acts mentioned in the indictment should be done in furtherance of the conspiracy from time to time thereafter as occasion might require through a series of years until the object of the conspiracy should have been accomplished, although he himself was not to do and did not do anything within the three-year period, and if after doing his part he remained acquiescent, expecting and understanding that



said further acts would be performed by the other members of the conspiracy, and did nothing to repudiate it or withdraw from it, the acts of the other members of the conspiracy in furtherance of it would be his acts, and would have the same effect against him as if he had done them himself. He would still be acting through his colleagues. He might be playing his part by keeping still as much as he did formerly by acting. If these titles were fraudulent, as alleged, and he assisted in procuring them for the purpose of having them used thereafter by other members of the conspiracy in effecting the fraudulent exchange alleged in the indictment, he was setting in motion a force which took him along with it, as long as he continued acquiescent and those things were being done which he had contemplated and agreed should be done (R., 820, 821).

\* \* \* \* \*

Did he know and expect that after the titles had been procured they would be exchanged for other lands, and that that would require these proceedings in Washington; that the titles would have to be worked through the Land Office here? Did he expect that that was a part of the plan and arrangement, that that was what the titles were gotten for, that that was really to be the fruit of the tree, the end and object of the whole thing, so that he contemplated that when he did the part which he did, and understood and expected that if he did not have anything to do with that the others would do that, and that that would very likely run through a series of years?

Now, if he understood that, and after he had done his part sat still, acquiescent, willing and expecting that the other things should be done, and did not withdraw from the conspiracy in any way, why then, as I said before, what his colleagues did he did in pursuance of the arrangement and understanding (R., 834).

There was more upon this subject, but to the same effect. Under this instruction it was not essential to the conviction of Schneider that he had continued an aggressive member of the conspiracy, and the instruction declared, and no doubt was intended to declare, that to relieve himself from the conspiracy, to escape responsibility for its future operation, he must do something to disclose it, and to prevent what he had done and helped to do from becoming effective.

He had gotten and helped to get fraudulent titles from the States, and he knew that the lands so obtained, with their fraudulent titles, in pursuance and consummation of the purposes of the conspiracy, were intended to be exchanged for Government lands, and that in regular course of the conspiracy this would be done unless the evil scheme was in some way made known to the Government. The court held it to be his duty, as it was within his power, to prevent the certain consequences of his own acts, and that his silence was acquiescence, continuation, and participation in the conspiracy.

Approving the charge of the trial court, the Court of Appeals said (R., 882):

No authority has been presented on this proposition, but the view of the court is a reasonable one. When one performs the part assigned to him in a conspiracy, it is just and reasonable that he should remain bound by the further acts of his coconspirators, who carry on the succeeding parts of it, if he does not expressly repudiate it or withdraw therefrom. He enters into a conspiracy and performs the part assigned to him, knowing that considerable time is necessary to its accomplishment, that successive steps are being taken by others to carry out the unlawful schemes instituted by his efforts, and that its success is dependent upon his secrecy. He ought, therefore, to be held as continuing in it and aiding it, unless he does some affirmative act showing his repentance and repudiation of it.

In cases like this, apparent inaction is real action. When conspirators have set a dynamite machine with a timed fuse in position to blow up a building and go away and leave it to do its destructive work in due course of time, they are continuing in their purpose and are in the actual execution of that purpose every moment of the time until the machine explodes. They can not all or any of them withdraw from the conspiracy without withdrawing the machine from its menacing position. One of them may not say to the others, much less simply to himself, "this destruction and slaughter be upon your heads. I wash my

hands of it." And for Schneider, under the testimony to which the instruction applies, nothing more could be said. He set the machine, and not until late in 1902, the indictment being found in February, 1904, did he suggest to anyone concerned for the Government what he had done, and in consequence of which frauds were then being practiced upon it. And he repented even of this late repentance. Until 1902, well within the period of limitation, there was participation by him in the conspiracy, because there was knowledge by him that forces which he had set in motion were continuing their operation and there was consent by him that they should accomplish the result intended from the beginning by him and his coconspirators.

## V.

### THE SCOPE OF THE CONSPIRACY.

Complaint is made that the court submitted to the jury as a question of fact to be determined by them whether it was within the scope of the conspiracy to bribe officials in Washington in order to expedite the exchange of lands. (Eighth and thirty-seventh assignments.)

The question was certainly one of fact and was properly submitted to the jury if there was any evidence to sustain it.

The evidence showed clearly a connected series of fraudulent acts, all related to the purposes of the conspiracy, including, among other things, bribes to

persons not qualified to purchase State lands, and bribes to clerks in the land office to expedite the business and ward off investigation. The bribery of the clerks was not an independent matter at all, but was an incident in the promotion of the conspiracy. Schneider knew that corrupt work of some kind was being done, for he told Holsinger that Government agents were interested and that arrangements had been made with a department clerk. (R., 392, 393.)

And there was evidence to connect Hyde with this bribery. The cases which were to be expedited and acted upon favorably were cases in which Hyde was interested. The slips or memoranda for the guidance of the clerks were prepared in Hyde's office (R., 204), and Benson got them from Hyde himself and sent them to the clerk (R., 729). Holsinger, a special agent of the Land Office, got a partial confession from Schneider in November, 1902, which referred to the "arrangements" with officials, and Benson got almost immediate information of this from one of the men he had bribed and in turn communicated it to Hyde (R., 728), who in his turn at once sent a man to Schneider to induce him to keep quiet (R., 191). Taking these specific facts in connection with the general evidence in the case which showed a scheme teeming with fraud and corrupt practices of every kind, and there is ample basis on which to rest the verdict of the jury holding Hyde and Schneider on the counts which charge the bribes as overt acts.

## VI.

**THE EFFECT OF THE ACQUITTAL OF BENSON AND DIMOND.**

It is contended that there could be no conviction of anyone under the indictment unless Hyde and Benson were both convicted, because it is said that as a matter of description of the offense "the conspiracy which the defendants are called upon to meet is one to which both Hyde and Benson were parties." (Ninth and tenth assignments.)

This means simply that an indictment for conspiracy must fail as to all charged unless all charged are convicted. The membership of a conspiracy must always be stated, and the statement of it is a part of the description of the offense, and so is the time of its formation, and in larceny the value of goods. But it is settled that variance from the value alleged, or the time stated, or in the membership of a conspiracy, is immaterial. Nor does it follow that there was any variance. The jury convicted Hyde and Schneider of the offense charged in the indictment and they acquitted Benson and Dimond. But this does not signify that the evidence against Hyde and Schneider was of a different offense from that charged, but only that the proof against them was more conclusive than that against Benson and Dimond.

## VII.

## RULINGS ON QUESTIONS OF EVIDENCE.

A number of complaints are made of the rulings on questions of evidence.

The witness Lavenson was a clerk in Benson's office and stated that he had principal charge of his affairs for a period of 10 or 12 years preceding the trial. (Twelfth assignment.)

He discloses no knowledge of Hyde's business or business methods. He was asked, "From 1897 to the early part of 1903, did you know anything as to the manner in which the applications of Hyde or from Hyde's office, had been obtained?" The desired and expected answer was that he did not know. The claim for this is that as Lavenson was a clerk for Benson, if he did not know how Hyde was getting his applications it would tend to prove that Hyde and Benson were not operating together. The court ruled that the ignorance of this witness was immaterial to the case. It is to be added that since the jury distinguished between Hyde and Benson in their verdict, Lavenson's state of information as to relations between Hyde and Benson loses all possible significance.

Objection is made that the Government was allowed, on direct examination of some of its own witnesses, to question them as to statements previously made by them to representatives of the Government. (Thirteenth to seventeenth assignments.)

As to the witness Valk, the testimony related exclusively to Benson, and as he was acquitted no one could have been prejudiced.

The witness Holsinger testified that in 1902 Schneider told him that Allen, superintendent of forests, was invited to come to Benson's office, and that he usually entered by the private door. The district attorney showed the witness a report which he had made of the interview within six days of its occurrence, and asked him to refresh his memory therefrom. The witness examined the report, said his memory was refreshed thereby, and that it was Hyde's office to which Allen came; that he, the witness, had Hyde's office in mind when he spoke of Benson's; that he used the names interchangeably because Schneider told him that they were one and the same concern, and that he, the witness, did not know that Benson had a separate office (R., 392-395).

This is said to be in violation of section 1073a of the Code of the District of Columbia, which provides:

Whenever the court shall be satisfied that the party producing a witness has been taken by surprise by the testimony of such witness, such party may, in the discretion of the court, be allowed to prove, for the purpose only of affecting the credibility of the witness, that the witness has made to such party or to his attorney statements substantially variant from his sworn testimony about material facts in the cause; but before such proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion



must be mentioned to the witness, and he must be asked whether or not he made such statements and if so allowed to explain them.

This section seems to us to have no relevancy whatever to the matter in hand. It has reference to the case of a witness who surprises the party calling him and gives testimony to his detriment instead of to his advantage. His statements to the contrary made to the party in reliance upon which he was called as a witness may then be shown to affect his credibility, but not as substantive evidence of the facts stated.

No such case is presented here. The witness did not "surprise" the Government by his testimony in the sense of the code. His recollection was wrong as to a detail, and what was done was no more than suggesting, "When you say Benson, do you not mean Hyde? In your report made at the time you said Hyde." And the witness, his memory thus refreshed, answers, "Yes; I mean Hyde." This is simply refreshing the recollection of the witness, because his memory was apparently at fault, and it is not attacking his credibility because he has entrapped the party calling him. That the witness might properly be permitted to so refresh his memory was ruled by this court in *Putnam v. United States* (162 U. S., 687, 694), and that the mode of examination which may be pursued in any particular case is within the sound discretion of the trial court was ruled in *St. Clair v. United States* (154 U. S., 134, 150).

The witness Tillie A. Fleischauer was apparently unfriendly to the Government. Her testimony as

to a conversation with Benson in regard to his getting from her a written statement concerning a land transaction in which she was involved was substantially different from a statement made by her to a Government agent and reduced to writing by him and signed by her. As to this she was examined at some length, and her attention was called to the contents of her written statement. (R., 550-556.) The statement as such was not offered in evidence. It was shown to her and portions of it read and incorporated in questions put to her, and all with a view to refreshing her recollection. No part of the statement as such became substantive testimony. This did occur (R., 556):

Q. I want to ask you whether or not you did not state to Mr. Neuhausen, in referring to the manner in which you obtained the land, as follows:

"One day not more than ten years ago, Mr. Benson called me up on the telephone at my residence, No. 727 H Street—I had moved from 1605½ Devisadero Street—and made an appointment to meet me at the corner of Montgomery and Sacramento Streets. He did not state over the telephone what he wanted to see me about; but when he met me at the street corner he asked me to go to a notary on Montgomery Street near Sacramento Street and sign some papers."

Did you make that statement to Mr. Neuhausen?—A. Yes.

Q. Is that true?—A. Yes; that is true.

Q. And did you make the further statement:

"I went with Mr. Benson and signed the papers before the notary, but I have not the slightest idea what the nature of the papers was. I signed the papers because I didn't wish to hurt Mr. Benson's feelings by declining to do so. I did not examine the papers at all, and Mr. Benson did not tell me that they related to land."

Did you make that statement to Mr. Neuhausen?—A. Yes; I made the statement.

Q. Is that so?—A. Yes.

The statement made to Neuhausen was not made evidence in the case, but only the repetition of that statement in the examination of the witness and her affirmation that it was true, made on the stand, under oath, in the presence of the accused and subject to cross-examination.

Again, it is a mere matter of how a particular witness was to be examined, and it was entirely within the discretion of the trial court.

It is further to be remarked that the testimony of this witness related exclusively to Benson. Neither Hyde nor Schneider are mentioned in it from beginning to end.

As to the witness Thomas S. Burnes, the criticism is made that Government counsel, in commenting upon his testimony, made use of a statement the witness had made to a Government agent, and by which his memory had been refreshed, as substantive evidence of the facts recited in the statement. What counsel said, as preserved in the bill of excep-

tions, is "that Burnes was asked a question as to the manner in which he did business for John A. Benson. Having his memory refreshed by the statement read to him that he made to Mr. Neuhausen and going over the matter again in his mind, he admitted they were all true." (R., 874.) We can add nothing to the comment of the Court of Appeals that "the witness having declared the statement to be true, it was the proper subject of comment by counsel." And this again related only to Benson.

It was proposed to prove as a sort of custom of the country that land agents in California preparing applications for State lands during the years covered by the experience of the witness had "the applicants make the affidavit as to the question of occupancy and as to the character of the land from their information and belief, and not necessarily upon personal knowledge." (Twenty-first assignment.)

The statute of California prescribing the affidavit to be made is as follows:

3495. Any person desiring to purchase any portion not less than the smallest legal subdivision of a sixteenth or a thirty-sixth section of any township which has been surveyed by the United States, must make an affidavit that he is a citizen of the United States, or has filed his intention to become so, a resident of the State, of lawful age; that he desires to purchase such lands (describing the same by legal subdivisions) under the provisions of this Title; that he has not

entered any portion of any sixteenth or thirty-sixth section which, together with that now sought to be purchased, exceeds three hundred and twenty acres; that there is no occupation of such lands adverse to any that he had; or if there is an adverse occupation, then the affidavit must show that the township has been sectionized three months, and that the adverse occupant (giving his name) has been in such occupation for more than sixty days. (Cal. Political Code, 1872, vol. 1, pp. 542, 543.)

The affidavit requires knowledge. The provision that the affidavit shall deal with the occupancy of the land was intended to insure the protection given to occupants by section 3497, and to allow them an opportunity to present any rights they may have. *Plummer v. Woodruff* (72 Cal., 29). And it has been repeatedly held and it is stated to be "well settled that when one seeks to purchase land from the State he must state in his affidavit, and state truly, all the facts required to be stated therein." *McKenzie v. Brandon* (71 Cal., 209, 211). The affidavit is, then, not a mere formality, but the title sought to be acquired fails unless it states, and states truly, all the facts called for by the statute. It could not, then, properly be made by anyone who did not know the facts, and no use or custom could justify a procedure so opposed to the letter and the spirit of the law.

This contention is upon the same plane with that made by the twenty-second and twenty-third assign-

ments with respect to the custom of notaries public in California, which, it was said, was to take acknowledgments and affidavits without the appearance of the person purporting to make the acknowledgment or the affidavit, and which the court would not permit to be argued by counsel for Benson as a circumstance in favor of his client.

There was evidence to show the forgery of the names of Elizabeth Dimond and another, who were fictitious persons. The trial court held that the evidence did not connect Benson with a conspiracy to defraud the Government by means of forgeries and fictitious names, and required the prosecution to elect either to dismiss as to Benson or abandon this charge of the indictment. The latter was done. The defendants then moved the court to withdraw this evidence from the consideration of the jury, which was refused upon the ground that it was relevant to the other charges of fraud in the indictment, as against the defendants other than Benson. The court fully protected Benson against this evidence, and as Benson was acquitted he does not complain. (Twenty-sixth and twenty-seventh assignments.)

That, as against Hyde and Schneider, there was evidence tending to show the use of forgeries and fictitious names by them is not denied, but because the charge of the indictment that the conspiracy contemplated and intended the use of forgeries and fictitious names, it is insisted that the evidence could not be received against anybody for any purpose. They were fraudulent acts and they had for their purpose

the fraudulent acquisition of Government lands in exchange for State lands, and they were means actually employed by Hyde and Schneider in carrying out their fraudulent scheme. Instead of inducing real persons to buy the State lands for them, which was not lawful, for persons could lawfully buy only for themselves, in the instances under question they used fictitious names to accomplish a like result. The getting real persons to buy for them was charged to have been done with fraudulent intent, and the intent of the defendants was an issue in the case.

*The evidence was clearly admissible, and was therefore properly allowed to remain in the case, as tending to establish guilty knowledge, intent, and purpose, and would have been admissible on that theory if there had been no charge in the indictment involving forgery or the use of fictitious names.*

No principle is better settled than that in cases where fraud is the issue evidence of other frauds of similar character, committed about the same time, is admissible to show guilty knowledge and fraudulent intent, and great latitude is allowed in the reception of such evidence. The more the jury can see of the surrounding or attending facts and circumstances in such cases, the more likely is their judgment to be correct. The competency of the collateral fact in such a case is not to be determined upon any theory of conclusiveness with respect to the inference to be drawn from it. If it throws any light upon the question of motive or intent as to the fact charged, it is admissible.

In *Wood v. United States* (16 Pet., 342, 360) Mr. Justice Story, speaking for the Supreme Court, said:

\* \* \* where the intent of the party is matter in issue, it has always been deemed allowable, as well in criminal as in civil cases, to introduce evidence of other acts and doings of the party of a kindred character, in order to illustrate or establish his intent, or motive in the particular act, directly in judgment.

In *Castle v. Bullard* (23 How., 172, 187) the court said:

\* \* \* Experience shows that positive proof of fraudulent acts is not generally to be expected, and for that reason, among others, the law allows a resort to circumstances, as the means of ascertaining the truth. Great latitude, says Mr. Starkie, is justly allowed by law to the reception of indirect or circumstantial evidence, the aid of which is constantly required, not merely for the purpose of remedying the want of direct evidence, but of supplying an invaluable protection against imposition. 1 Stark. Ev., 58.

In *Holmes v. Goldsmith* (147 U. S., 150, 164) it was said:

\* \* \* As has frequently been said, great latitude is allowed in the reception of circumstantial evidence, the aid of which is constantly required, and, therefore, where direct evidence of the fact is wanting, the more the jury can see of the surrounding facts and circumstances the more correct their judgment is likely to be. "The competency of a col-



lateral fact to be used as the basis of legitimate argument is not to be determined by the conclusiveness of the inferences it may afford in reference to the litigated fact. It is enough if these may tend, even in a slight degree, to elucidate the inquiry, or to assist, though remotely, to a determination probably founded in truth." *Stevenson v. Stewart*, 11 Penn. St. 307.

The modern tendency, both of legislation and of the decision of courts, is to give as wide a scope as possible to the investigation of facts. Courts of error are especially unwilling to reverse cases because unimportant and possibly irrelevant testimony may have crept in, unless there is reason to think that practical injustice has been thereby caused.

Confessions or admissions made by Schneider to three different persons, William J. Burns, J. Knox Corbett, and S. J. Holsinger, were received in evidence against him. According to these confessions Schneider was in the conspiracy and actively engaged in it within the period of limitation. (Thirtieth assignment.)

This testimony is objected to in the view that it is the only evidence to show participation by Schneider inside the bar.

The court held such admissions competent to go to the jury, as against Schneider alone, and that the jury might consider them, as far as applicable, as evidence that Schneider participated in the conspiracy within the limitation period, if they should

find from the whole evidence that the conspiracy existed, and that Schneider was a party to it before that period. The admissions were allowed as tending to show the point of time of Schneider's connection with the conspiracy; not as in themselves evidence of the conspiracy itself—the *corpus delicti*. The conspiracy was abundantly proved by other evidence in the case, both as to its existence prior to the three years and as to the continued operation of the scheme within that period, and we submit it was entirely competent, as against Schneider's claim that he had withdrawn from the conspiracy prior to the three years, to prove the contrary by his own admissions voluntarily and deliberately made. Surely, there could be no more effective way to disprove such claim than by his own statements to the effect that he was a party to the fraudulent scheme within the three years.

But if such admissions be considered as extrajudicial confessions under the rule which requires corroboration by evidence *aliunde* as to the body of the crime, there could still be no question that they were properly received in this case, because there was other evidence of the existence of the conspiracy prior to the three-year period, and of continued operations under it within that period. It was not necessary that the corroborative evidence should be such as alone to establish the conspiracy beyond a reasonable doubt. It was sufficient if, when considered in connection with the admissions, it satis-

fied the jury beyond a reasonable doubt of the existence of the conspiracy charged, and that Schneider was a party to it within the period of limitation.

We refer to the following among the many adjudications on the subject:

*Flower v. United States* (53 C. C. A., 271), where it was held that the evidence corroborating the confession need not be such as to alone establish the *corpus delicti*, beyond a reasonable doubt, but it would be sufficient if, when considered in connection with the confession, it should satisfy the jury beyond a reasonable doubt that the offense was committed, and that the defendant committed it. (See the note to that case, at pp. 278-282.)

*Ryan v. State* (100 Ala., 94, 95):

Positive, direct evidence of the *corpus delicti* is not indispensable to the admission of confessions. Whenever facts and circumstances are proven, from which a jury might likely infer that the offense has been committed, the confessions are admissible. The proven facts and circumstances and the confessions of the defendants may then be weighed and considered together, and if upon the whole evidence the jury are satisfied beyond a reasonable doubt, both as to the *corpus delicti* and the identity of the defendant as the guilty perpetrator, it becomes their duty to convict. *Winslow v. The State*, 76 Ala. 42; *Matthews v. The State*, 55 Ala. 187; *Colquit v. The State*, 61 Ala. 48; *Johnson v. The State*, 59 Ala. 37.

*State v. Patterson* (73 Mo., 695, 712-713):

It is sufficient, in addition to the extra-judicial confessions, which in this instance in express terms admit all that the indictment charges, that there be such extrinsic corroborative circumstances, as will, taken in connection with the confession, produce conviction of the defendant's guilt in the mind of the jury. It has often been ruled by this court that confessions uncorroborated by circumstances are insufficient. *Robinson v. State*, 12 Mo. 592; *State v. Scott*, 39 Mo. 424; *State v. German*, 54 Mo. 526. This is equivalent to asserting their sufficiency when meeting with the necessary corroboration. But such suppletory evidence need not be conclusive in its character. When a confession is made, and the circumstances therein related correspond in some points with those proven to have existed, this may be evidence sufficient to satisfy a jury in rendering a verdict asserting the guilt of the accused. "Full proof of the body of the crime, the *corpus delicti*, independently of the confession, is not required by any of the cases, and in many of them slight corroborating facts were held sufficient." *People v. Bladgley*, 16 Wend. 53; *People v. Hennessey*, 15 Wend. 147, and cases cited; *Bergen v. People*, 17 Ill. 426; *State v. Lamb*, 28 Mo. 218; *Daniel v. State*, 63 Ga. 339; *People v. Rulloff*, 3 Parker Cr. R. 401.

*People v. Jones* (123 Cal., 65, 68-69):

The rule is well established that a conviction can not be had on the extra-judicial confessions

of the defendant, unless corroborated by proof *aliunde* of the *corpus delicti* (*People v. Jones*, 31 Cal., 566; *People v. Thrall*, 50 Cal., 415) \* \* \*; but it is not necessary that the evidence of the *corpus delicti* should itself connect the defendant with its perpetration in order to make the confession admissible. Mr. Justice Clifford, in commenting upon the language used in Greenleaf on Evidence, said: "Considering the language employed by that author, it is somewhat doubtful how far he would carry the doctrine; and, if it is to the extent that the *corpus delicti* must be fully proved independently of the confession we are not prepared to adopt it, as in that view the admission of the confession would be useless except to prove the agency of the accused, and would operate as an exclusion of the confession for any other purpose; whereas, if freely and voluntarily made, it is clearly admissible as evidence in support of any element in the charge to which it applies. Full proof of the body of the crime, the *corpus delicti*, independently of the confession, is not required, says Nelson, C. J., in *People v. Badgley* (16 Wend., 59), by any of the cases; and in many of them slight corroborating facts were held sufficient." (*United States v. Williams*, 1 Cliff., 5, 24.)

The proof was clear against Schneider that he was in the conspiracy and was active in its operation; that it continued its operations until a short time before the indictment was found; that until he made his confession in 1902 he had done nothing in the way

of withdrawing from or repudiating it, but was consciously consenting that work which he had begun in the promotion of the conspiracy should be carried to a conclusion, and that frauds which he had committed should continue uncovered and accomplish their purpose of despoiling the Government.

Indeed, the confession itself, not for what it recites, but as a mere fact, is proof that Schneider was in the conspiracy up to that time, and broke with it at that time, and by that act, which he soon recanted, renewing then the old and evil association.

It was proposed to show by Schneider that a lawyer named Zabriskie had told him that he, Zabriskie, would get an appointment from the Government to prosecute the members of this conspiracy and in such event he would see that Schneider "got a good thing out of it." It is argued that this was competent as bearing upon the weight to be given to his confession as having been induced by the promise of a reward. (Thirty-first assignment.)

At the time of the trial Zabriskie was dead. Schneider had left the employ of Hyde in December, 1901, and had gone to Arizona to live. There he met Zabriskie, and some time in 1902 he informed Zabriskie of the existence and operations of the conspiracy. Zabriskie informed the Commissioner of the General Land Office by a letter written May 24, 1902, at the instance of Schneider (R., 378). Schneider himself wrote to the commissioner on July 30 and September 24 (R., 379). Holsinger was sent out to investigate. He met Zabriskie and Schneider, and what occurred

between them was fully shown. Schneider was acting upon his own initiative. He was not under arrest. He was not accused. He was himself the accuser. The motive of his action was disclosed by himself to Holsinger, who testifies as to this (R., 393, 394):

"\* \* \* I was anxious to get his sworn statement from him, but he refused to give that until I would give him a guarantee of immunity, which I could not do without authority from the Secretary.

"I asked him also, but I believe I mentioned my doing this, as I said, 'Mr. Schneider, you must have some object in telling this, other than a citizen usually has in giving information.' He said he was doing so because they had not treated him right; that they had offered him compensations which they had never fulfilled; and that he had finally urged them to pay him these amounts. He never mentioned what they were, but said he was to receive benefits other than his salary, which they failed to give him; and that he threatened to resign and he thought they would not let him, but they did. He said, 'Now I want to get even with them. That is my only object.'"

That this was his motive is not denied by Schneider, and no other motive for this temporary severance of relations with the conspiracy appears in the record.

There is no pretense that Schneider made any false statements to Holsinger, induced by the suggestion of "a good thing," made by Zabriskie, if it was made. Schneider's contention in his testimony is that Hol-

singer's report was not a fair statement of what occurred in the interview between Holsinger, Zabriskie, and Schneider.

Previous conversations between Schneider and Zabriskie alone could have no bearing upon what occurred when Holsinger was present. The only effect of showing what was alleged to have occurred between Schneider and Zabriskie would be to impeach Zabriskie, and he was not a witness, or to impeach Schneider himself.

Schneider's disclosures to Zabriskie could not have been induced by any promise of "a good thing," made by Zabriskie, for such a promise could not have been made until after the disclosure. Zabriskie knew nothing of what Hyde and Schneider had been doing until Schneider told him. Schneider on his cross-examination said that his letter of July 30, 1902, "is the consummation of the conversation I had with Colonel Zabriskie" (R., 756). This letter is as follows (R., 379):

BRADY-SCHNEIDER COMMISSION CO.,  
DEALER IN CATTLE, RANCHES, AND  
REAL ESTATE, ETC., ETC., ETC.,  
*Tucson, Ariz., July 30, 1902.*

HON. BINGER HERMANN,  
*Commissioner Gen'l Land Office,*  
*Washington, D. C.*

SIR: Yours of July 24th at hand, and in reply will state that I called on Co. Zabriskie and he told me that no special Agent nor any other person connected with the Department of the Interior has called on him.



He said he had expected the arrival of such Agent, but he had never come, nor had he received any reply to his last letter written you. Therefore the matter has remained statu quo.

If such an Agent should come here and consult with us, we would be able to give him many details of a startling character, and you will hear the foundation for as big a case as the Department has had for some time. Awaiting your pleasure, I remain,

Respectfully yours,

J. H. SCHNEIDER.

Schneider says as to this letter that he wanted to tell the department "about dummy applications." (R., 756.) There were such applications, and a multitude of them, and the term is as fitting to applications in fictitious names as by persons not qualified to purchase.

Here, then, was Schneider moved by revenge to expose his employer and confederate Hyde. If his spirit of revenge was calculated to color what he said when he made the disclosure to Zabriskie, the pertinent facts are in the record. What Zabriskie afterwards said to him neither induced nor colored what he had said.

The purpose of offering this testimony must be considered as disclosed by the record (p. 768):

Mr. WORTHINGTON: We offer to prove that in conversations which the witness had with Zabriskie, prior to the interview with Holsinger, that Zabriskie had told the witness that

he represented the Government in the prosecution of the so-called Star Route cases, and that he, Zabriskie, proposed, in this matter which he and the witness were in communication with the Government about, that in these alleged frauds in California and Oregon, that he, Zabriskie, would get an appointment under the Government to prosecute them as he had in the Star Route cases, and in that case he would see that the witness got a good thing out of it; and that this was one of the influences operating in the witness' mind at the time the statement was made to Holsinger, when the three of them were present.

The COURT: When you say that that was one of the influences operating on his mind, do you mean that you offer to show that that induced him to make statements to Holsinger that were not true?

Mr. WORTHINGTON: I do not know that he will go that far or not; but he will say that Zabriskie interrupted the talk, and that a lot of information given to Holsinger was given by Zabriskie.

The COURT: I have not excluded anything of that sort. You can show everything that Zabriskie said to Holsinger in his presence.

Mr. WORTHINGTON: He will be unable to segregate what Zabriskie said and what he himself said.

The COURT: You may have him state anything that Zabriskie said to Holsinger in his presence.

I will exclude the offer, and an exception will be noted.

It is to be remembered also that the testimony as to these so-called confessions of Schneider was received only against him.

When evidence of Schneider's confessions was first offered and objection made to it, the jury were sent from the room while the objection was being discussed. When the discussion was closed, the record recites (p. 376):

When the jury returned to the court room they were charged as follows:

"The COURT: The jury will understand that this evidence is received as against Schneider only. This matter, as to what Schneider said, is not evidence against the other defendants, but only against him."

It was then agreed between the court and respective counsel in the case that the same objection, ruling and exception should be taken to apply to any testimony of the witness Burns, or any other witness, as to admissions or confessions made to such witness by the defendant Schneider.

The court recurred to the matter in the charge to the jury, saying (R., 818):

As to each defendant, you will remember it to be true that some evidence has been introduced against him that was not admitted as against the others. For this reason it is possible that there may be a verdict against one only of the defendants, although in fact he could not be guilty alone. You see, that necessarily results, because one is to be tried on the evidence which was admitted against him. As to most of the evidence, it was admitted as

against all; but there was some evidence—for instance, the alleged confessions of Schneider—which was admitted as against him only.

Here, then, was evidence offered by Schneider on his own behalf of a fact for the purpose of impeaching his own credibility, which fact, however, he declines to say influenced him in any manner whatever.

It was shown that Schneider, after he had repented of his repentance or revenge, went to Mexico and was there for a time under an assumed name. He explained this, saying that he believed that his mail was being tampered with and that he had failed to receive letters which had been addressed to him. This was true; and some of these letters were in the possession of the Government at the trial and were produced at the request of counsel for Hyde. The district attorney testified that he got them from Mr. Pugh, his assistant, and Mr. Pugh testified that they came into his possession in an envelope taken from Secretary Hitchcock's safe some time after Mr. Burns withdrew from the case. It was evident, as the Court of Appeals said, that the letters "had been wrongfully or unlawfully obtained by agents of the Government." The defendants called Dalzell, the Chief Clerk of the Dead Letter Office, to prove that the letters had never reached that office. (Thirty-second assignment.)

In making the offer of this proof, counsel for defendants said (R., 799):

The whole evidence was offered, your Honor, for the purpose of explaining the point

which the Government brought out on the cross-examination of Mr. Schneider, that he had gone under the name of John P. Jones, and that the reason for that, or one reason for it, was that his mail was being tampered with. Now, the evidence this morning tends in that direction; but it leaves room for the Government to contend that those letters have been to the Dead Letter Office, and have been opened there, and might have gotten in the possession of the Secretary of the Interior or Mr. Burns honestly. We offer to call this witness for the purpose of closing that gap, and showing that necessarily somebody must have been committing a greater crime than is charged against any of these defendants, in robbing the mail.

Upon this the court ruled (R., 800):

I do not think I will allow this matter to go in for the purpose of creating prejudice against the Government, or arguing that somebody has committed a graver offense than the defendants have. I think we will stop it where it is. I will exclude your offer, and note an exception. I think I have allowed more than the law would justify, if strictly held.

The ruling was entirely proper. The envelopes showed that the letters had gone to Mexico and had come back to Tucson, and then had gotten into the possession of the Government improperly. The clerk of the Dead Letter Office could add nothing to the force of this. The fact which Schneider said

occasioned his assumption of the name of Jones was fully proven, and it was certainly not proper on the part of the defendants to offer evidence that "somebody must have been committing a greater crime than is charged against any of these defendants, in robbing the mail."

### VIII.

#### FORCE AND EFFECT OF THE DEEDS BY CALIFORNIA AND OREGON CONVEYING THE SCHOOL LANDS.

Defendants contend that the titles to State lands secured through purchase of the lands by persons not qualified under the State laws to make such purchases were good and valid, and therefore the United States was not defrauded when it took these lands in exchange for others outside the forest reserves. (Twenty-fourth assignment.)

This question is settled by *Hyde v. Shine*. (199 U. S., 62.) What this court said in that case applied as well to lands gotten by "dummies" as to those gotten by the use of "fictitious names and forgeries." The title of Hyde in the one case was as fraudulent as in the other. The title which the United States got as an innocent purchaser might be better in the case of the "dummy" purchaser, but that is a matter which will not avail the defendants. As to this the court said (pp. 82, 83):

Whatever may be the rule in equity as to the necessity of proving an actual loss or damage to the plaintiff, we think a case is made out under this statute by proof of a conspiracy to defraud and the commission

of an overt act, notwithstanding the United States may have received a consideration for the lands and suffered no pecuniary loss. *MacLaren v. Cochran*, 44 Minnesota, 255. The law punishes the false practices by which the lands were obtained, and the question whether the Government stands in the position of a *bona fide* purchaser with respect to the school lands is not one which can be litigated in a criminal prosecution for a violation of law.

Even if the United States were in a position to claim the rights of a *bona fide* purchaser to the State lands, the methods by which these lands were acquired from the States, and the lands in exchange therefor procured from the United States, would be none the less a fraud of which the latter might take advantage in a criminal prosecution. The indictment under section 5440 charges a conspiracy to defraud the United States out of the possession, use of, and title thereto of divers large tracts of public lands, and if the titles to these lands were obtained by fraudulent practices and in pursuance of a fraudulent design, it is none the less within the statute, though the United States might succeed in defeating a recovery of the State lands by setting up the rights of a *bona fide* purchaser. Under the circumstances it can not be doubted that the United States might maintain a bill to cancel the patents to the exchanged lands procured by these fraudulent means, notwithstanding its title to the forest reserve lands might be good.

## IX.

## THE CHARGE OF THE COURT.

The principal questions covered by the charge of the court have been considered, but there are some detail matters of which complaint is made.

The court instructed the jury that while one person alone could not be guilty of the conspiracy charged, yet as the evidence against the different defendants was not the same, and each was to be tried on the evidence admitted against him, one alone might be convicted. (Eleventh assignment.)

The question presented was elaborately argued in the Court of Appeals, but that court, in view of the result, Hyde and Schneider both having been found guilty, held the question to be a purely academic one, and passed it by. This seems to us a correct disposition of the matter, as it is impossible to conceive how the charge in this respect, whether right or wrong, could have prejudiced the defendants.

The defendants asked an instruction, which was refused, to the effect that although the affidavit of an applicant for purchase of State lands was made on information and belief, this would not invalidate his title. The effect of such affidavits need not be considered here, since the applications for purchase involved in this case were fraudulent because the applicants were not buying for themselves but for Hyde. (Twenty-fifth assignment.)

Comment of the court upon the force of letters as evidence is excepted to. (Twenty-eighth and twenty-ninth assignments.)



The court said (R., 851):

Now, I think, I am justified in advising you that written evidence, letters, for instance, written by parties at the time, are entitled to peculiar consideration as evidence.

When a witness takes the stand and says that a man said so-and-so five or six years ago, he may be mistaken—he may not remember; but when you have in black and white before you the words that were actually used, you are not in doubt any longer about what the words were.

The commonplace suggestion that personal recollection of words used in the past is not as reliable as a written record of the words at the time was certainly not invading the province of the jury as judges of the fact and was within the discretion permitted to the Federal courts in the trial of cases. The charge of the court in its entirety very emphatically left the case to the jury for determination.

Comments on the anonymous letters imputed to Dimond, and to him alone, can not have prejudiced Hyde or Schneider.

## X.

### CONDUCT OF THE COURT ON THE TRIAL.

A portion of the argument of counsel for Hyde was challenged as improper. (Seventeenth assignment.)

This is the record on the subject (pp. 812, 813):

Mr. A. S. Worthington, of counsel for the defendant, Hyde, argued the case to the jury,

and in the course of his argument the following occurred:

"Now, another thing. I want to refer to the situation of the witnesses by whom the Government, in large and general has been making out its case, and to the character of those witnesses, according to the Government's theory of the case.

"Gentlemen, nine witnesses out of ten who came upon this stand, it was apparent from what took place in this court room, came here in chains. They were not free agents. Our forefathers, shortly after the Constitution of the United States was adopted, were so much afraid that the Government would become a Government which would exercise the same tyranny that had been exercised over the colonies by the Parliament of England, that they took pains to amend that Constitution, and one of the amendments that they put into it was that no man should be put upon trial in any court of the United States, on a criminal charge, upon evidence except that which should confront him on the witness stand. You may take depositions in civil cases, pending in these other courts. The defendant has the privilege, under the statute in force here, with the permission of the court, of taking depositions away from the place of trial; but the Government must put upon the stand the witnesses who are to testify, and they must be subject to cross-examination by counsel for the defendant. Of that constitutional right we have been substantially deprived. It has been taken away from us by what has

taken place here. Witness after witness has been brought here, before some representative of the Government, and in the absence of the defendants and of their counsel, and he has taken down in writing or in typewriting their statements, and an officer of the law, authorized to administer an oath, has sworn them to those statements; and every witness, almost, who came upon the stand from Oregon or California, just before he was put upon the stand, and in many cases upon the morning before he took the stand, was shown that affidavit; and if, when he got upon the stand, he undertook to depart from what he had sworn to, then the Government was here in an uproar, and was asking him whether he had not testified so and so, and whether it was not true.

"Mr. BAKER. I object to this argument unless it is made for the purpose of impeaching the witnesses when they took the stand.

"Mr. WORTHINGTON. That is just what I am going to do, and if you will wait a moment I will show you how I am going to do it.

"The COURT. The statement was not a proper statement as it was made, but it may not have been intentional. When counsel says that the defendants have been deprived of their constitutional rights that is an impeachment of the court.

"Mr. WORTHINGTON. I mean in substance and effect.

"The COURT. That is the same thing. It is a distinction without a difference. When you say that, you say the Court has ruled contrary to the Constitution of the United States.

"Mr. WORTHINGTON. I take that back. I do not mean of course, to assume the functions of the Court, and to tell you that the constitutional law of the United States has been violated, but I say that the effect of what has taken place has been practically to deprive us of any of the benefit of that provision.

"The COURT. That is the same thing. You do not change it a particle, and I hold that it is improper argument."

To this ruling of the Court, counsel for the defendants and each of them duly excepted.

It is sufficient as to this to say that if the comment by counsel was justified there must have been very serious error committed by the court in its rulings upon the evidence. Those rulings were the subject of review by appellate tribunals, but not by the jury. It was hardly to be expected that the court would submit to the statement that the defendants had by the mode of their trial been denied their constitutional rights, and the statement itself, we take it, will not be seriously insisted upon as an appropriate argument to the jury.

The court required the jury to be kept together during the trial, which lasted nearly three months, and they were three days engaged in consideration of their verdict. This confinement, it is said in the motion, had the effect of coercing them to agree. (Eighteenth to twentieth assignments.)

The mere length of time involved in the trial and after submission of the case, in consideration of the verdict by the jury, will hardly serve to discredit

the result. The indictment was in forty-two counts, and the testimony as preserved in the record six hundred and forty closely printed pages.

Having retired on Friday, June 19, to deliberate, the jury returned on Monday, June 22, at 11 a. m., and reported that they could not agree. The record recites that (p. 854):

\* \* \* The Court thereupon instructed the jury to retire for further deliberation and make another effort to agree upon a verdict, charging them, however, that should they render a verdict it must be one to which they all freely agreed; that the law would not recognize a coerced verdict or one which was not the free expression of the views and opinions of the jurymen; and that if after another conscientious effort the jury still fail to agree they should return to the Court and so state. That it was not the purpose of the Court to unduly prolong their deliberations, and that if they could not conscientiously and freely agree upon a verdict they would be discharged.

The jury returned at 2.50 p. m. of the same day and again reported that they could not agree.

These further proceedings were then had (R., 854, 855):

The COURT: I have one further suggestion to make to you, after consultation with counsel. I think I ought to tell you that under the law as I have held it in this case, and which is settled as the law of this case for this trial, it is possible for you to clear up the record as to part of the defendants, even though you should

not be able to agree as to others. If you can agree as to anyone of the defendants, as to whether he is guilty or not guilty, you may do so. If there are any of the defendants as to whom you can say "Guilty" or "Not Guilty," and all agree, you may return such a verdict as to such defendants; and as to those defendants touching whom you can not agree, you may so report.

So that I will ask you to retire to your room and see if you can decide the case as to any of the defendants distinguishing carefully between the different counts of the indictment—especially between the first thirty-four or thirty-five counts, which are outside of the bribery charges, and the last eight counts, I think which will deal with the bribery as overt acts.

Begin for instance, with the defendant Hyde and say as to the early counts, one by one, whether you find him guilty or not guilty; and then as to the bribery counts, as to those overt acts, whether you find him guilty on those, or not guilty. And so with each of the other defendants.

It is possible that you may be able to relieve the docket as to some of the parties although you can not as to all. On two of the counts you will, as directed, return a verdict of "Not Guilty." 29 and 33, I think are the numbers. You have them.

So I will ask you to retire and take up that question, and see if you can decide the case to that extent.

Mr. WORTHINGTON: Will you let the jury wait one moment? I want to speak to your Honor.

(At this point a conference took place between the Court and counsel on both sides.)

The COURT: In order that there may be no possible misunderstanding I will remind you again that of course you can not convict under any count without you find the conspiracy established, and the overt acts also; but you might find it as to one defendant on the evidence against him, whereas you could not find it as to the other defendants on the evidence against them. But you will take up each count by itself, and remember that it involves the charge of conspiracy and the overt act—each one. I think you will understand.

In all this there was nothing of urgency upon the jury to agree on the score of expense of retrial, or any other consideration foreign to the merits of the case, and nothing was said to impair in the slightest degree the independence of individual jurors.

## XI.

### IMPEACHMENT OF THE VERDICT.

But it is said that the result was a compromise verdict, viz (R., 151):

\* \* \* the result of an agreement made in the jury room after the jury had retired to consider their verdict between some of the jurors, whose judgment and opinion on the evidence was that all the defendants should be convicted, and others of the jurors, whose judgment and opinion on the evidence was

that all the defendants should be acquitted, and which agreement was in substance that if those of the jurors who were in favor of convicting the defendant Benson would join in a verdict of acquittal as to him, those who were in favor of acquitting the defendant Hyde would join in a verdict of conviction as to him; and that if those of the jurors whose opinion on the evidence was that all the defendants should be convicted would vote for the acquittal of the defendant Dimond, those who were in favor of acquitting all the defendants would vote for the conviction of the defendant Schneider.

This statement in the motion for new trial is said by counsel in the affidavit supporting the motion to be based upon information which he believes to be true, and obtained by him from two of the jurors, who themselves, however, decline to make affidavit in the matter unless required by the court.

How many jurors were involved in this agreement? Not all of them. It was between "some of the jurors" who thought all the defendants should be convicted, and "others of jurors" who thought they should all be acquitted. How many of each of these extreme classes there were the motion does not indicate. Was there more than one? There need not be more than two to satisfy the statements of the motion broadly. Can four jurors impeach a verdict by saying we agreed two and two to compromise with each other our extreme views and came to accord with the majority upon a middle ground, although we still held each twain of us to our original verdict?



Of course there was agreement between the jurors or there could be no verdict. And in any case, unless there is accord from the beginning, there will be much discussion and attempts at persuasion, one with another. There must be some yielding of original opinion by some one, and usually no doubt there is by everyone. What is often called a compromise verdict is neither illegal nor dishonest. When the result of the so-called compromise is ascertained, the composite of all the opinions, it may commend itself by its very reasonableness and be accepted by each individual juror as his judgment. And every juror in this case was polled and "upon his oath said that the said Frederick A. Hyde is guilty in manner and form as charged," and so he said of Schneider.

If a man who originally believed that all the defendants were guilty was shaken in that belief by the insistence of his fellows, some of them that only Hyde and Schneider were guilty and others of them that none of them were guilty, and were to say, "I will consent now to return a verdict acquitting Benson and Dimond if you will unite with me in a verdict convicting Hyde and Schneider," would the verdict accordingly not be his honest verdict? And so as to agreement by the men at the other extreme. It is a very natural mode of expression, no doubt, among jurors, and especially when there has been for any length of time disagreement between them, but it does not indicate a corrupt purpose or a disregard of their duty.

We are not dealing here with any extraneous matter, but with something which inheres in the verdict and in the mental and moral processes by which it was reached. Here was no agreement for an extraneous mode of determining the verdict, the juror agreeing to abide the result, not knowing what it might be. There was no casting of lots, no game of chance, and no compulsion of any sort. The utmost to be made of it is a proposal by one juror to another, "I will agree to a verdict convicting Hyde and Schneider and acquitting Benson and Dimond if you will do so." May the proposing juror impeach the verdict by saying his judgment and conscience did not sanction the proposal? May the assenting juror in like manner discredit his assent?

The allegations of the motion for new trial really do no more than disparage the discussions of the jury room in respect of the accuracy and propriety of verbal expression. Few verdicts could stand against such criticism. And the law has shielded them against it.

In *Perry v. Bailey* (12 Kans., 539, 545) it was held:

Public policy forbids that a matter resting in the personal consciousness of one juror should be received to overthrow the verdict, because, being personal, it is not accessible to other testimony; it gives to the secret thought of one the power to disturb the expressed conclusions of twelve; its tendency is to induce bad faith on the part of a minority, to induce an apparent acquiescence with the purpose of

subsequent dissent; to induce tampering with individual jurors subsequent to the verdict. But as to overt acts, they are accessible to the knowledge of all the jurors. If one affirms misconduct, the remaining eleven can deny; one can not disturb the action of the twelve; it is useless to tamper with one, for the eleven may be heard. Under this view of the law, the affidavits were properly received. They tended to prove some things which did not essentially inhere in the verdict, an overt act, open to the knowledge of all the jury, and not alone within the personal consciousness of one. If one juror was drunk while the jury were in their room deliberating, it was a fact he could hardly keep to himself; it was not a matter resting wholly in his own consciousness.

In *Woodward v. Leavitt* (107 Mass., 453) the subject was exhaustively considered. It was there stated (p. 460):

The proper evidence of the decision of the jury is the verdict returned by them upon oath and affirmed in open court; it is essential to the freedom and independence of their deliberations that their discussion in the jury room should be kept secret and inviolable; and to admit the testimony of jurors to what took place there would create distrust, embarrassment and uncertainty.

The two above cases were cited with approval by this court in *Mattox v. United States* (146 U. S., 140, 148-149).

In *Wright v. The Illinois and Mississippi Telegraph Co.* (20 Ia., 195, 210) it was held:

That affidavits of jurors may be received for the purpose of avoiding a verdict, to show any matter occurring during the trial or in the jury room, which does not essentially inhere in the verdict itself, as that a juror was improperly approached by a party, his agent, or attorney; that witnesses or others conversed as to the facts or merits of the cause, out of court and in the presence of jurors; that the verdict was determined by aggregation and average or by lot, or game of chance, or other artifice or improper manner; but that such affidavit to avoid the verdict may not be received to show any matter which does not essentially inhere in the verdict itself, as that the juror did not assent to the verdict; that he misunderstood the instructions of the court; the statements of the witnesses or the pleadings in the case; that he was unduly influenced by the statements or otherwise of his fellow jurors, or mistaken in his calculations or judgment, or other matter resting alone in the juror's breast.

In *Gottlieb Bros. v. Jasper & Co.* (27 Kans., 770, 775) it was held as follows:

Of course the testimony of jurors cannot be received to show matters which essentially inhere in their verdict. A juror cannot be introduced to show that he did not agree to the verdict; or that he intended something different from what he in fact found; or that he was misled by some remark of the court, or counsel, or his fellow jurors; or that he was influenced

by his fellow jurors, or by others; or that he did not understand the pleadings, or the evidence, or the instruction of the court; or that his verdict was not founded upon the evidence, but was founded upon something extraneous thereto, and outside of the case. Nor can he be permitted to state the reasons or the grounds upon which he agreed to the verdict, or the motives which governed him; and indeed he cannot be permitted to testify to anything which rests solely and exclusively within his own personal consciousness, or which necessarily constitutes or forms a portion of his verdict. But the juror may testify to facts which transpired within his own personal observation, and which transpired in such a manner that others, as well as himself, could be cognizant of them, and could testify to them.

## XII.

### THE MOTION IN ARREST OF JUDGMENT.

This motion presents nothing that has not been already considered.

#### **In conclusion.**

Believing that the evidence establishes beyond all doubt that the defendants were guilty of the offense charged against them, and that there was no error to their prejudice in their trial, we respectfully submit that the judgment of conviction against them should be affirmed.

F. W. LEHMANN,  
*Solicitor General.*

APRIL, 1912.



225 U. S.

Syllabus.

HYDE AND SCHNEIDER *v.* UNITED STATES.ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE  
DISTRICT OF COLUMBIA.No. 447. Argued October 23, 24, 1911. Reargued May 3, 1912.—Decided  
June 10, 1912.

In this case the defendant applied for a writ of certiorari and the Attorney General assented to granting it on the ground that the determination of the case depends upon the principles of law governing conspiracy and it is of vital importance to the United States, as well as its citizens, to have those principles settled by this court.

While under the ancient rule of conspiracy the gist was the conspiracy itself and the crime was complete without any overt act, § 5440, Rev. Stat. prescribes as necessary to constitute an offense under it not only the unlawful conspiracy but also an overt act to effect the object by at least one of the conspirators.

*Quære* as to the extent of agency between persons conspiring in violation of § 5440, Rev. Stat.

There may be a constructive presence in a State, distinct from personal presence, by which a crime committed in another State may be consummated, and render the person consummating it punishable at that place.

In construing criminal laws, courts must not be in too great solicitude for the criminal to give him immunity because of the difficulty in convicting or detecting him.

In determining the place of trial there is no oppression in taking the conspirators to the place where the overt act was performed rather than compelling the victims and witnesses to go to the place where the conspiracy was formed.

The size of our country has not become too great for the effective administration of criminal justice.

Where a continuing offense is committed in more than one district, the Sixth Amendment does not preclude a trial in any of those districts. *Armour Packing Co. v. United States*, 209 U. S. 56.

Overt acts performed in one district by one of the parties who had conspired in another district in violation of § 5440, Rev. Stat., give jurisdiction to the court in the district where the overt acts are performed as to all the conspirators. *Brown v. Elliott*, p. 392, *post*.

*United States v. Kissel*, 218 U. S. 601, followed to the effect that a conspiracy under § 5440, Rev. Stat., may be a continuing one, and that the offense is not barred on the expiration of the period from the date of the conspiracy itself.

The fact that one of the conspirators was the servant of another conspirator does not preclude there being a conspiracy between them; and, until there is an affirmative withdrawal from the conspiracy by the servant, his acts bind his employer and co-conspirator so far as preventing the statute of limitations from running.

Until a conspirator affirmatively withdraws from a continuing conspiracy there is conscious offending that prevents the statute from running.

A disclosure to the Government by a conspirator does not amount to a withdrawal that would start the statute running if he thereafter commits overt acts, and whether there was acquiescence in the later acts of another conspirator is for the jury to determine.

Pleas in abatement on account of irregularities in selecting and impaneling the grand jury which do not relate to the competency of individual jurors must be pleaded with strict exactness and at the first opportunity. *Agnew v. United States*, 165 U. S. 36.

While there may not be a conspiracy by one person alone, it is possible that some of the evidence may be admitted as against individual defendants and not against all; and it is not error for the court to charge that the jury might convict any one of the defendants alone, if accompanied by the statement that his instructions related to the sufficiency of evidence produced as to each defendant. In this case the charge of the court in regard to the conviction of one or more of the defendants was not to their prejudice but in their interest.

Whether the conviction of one of several persons charged with conspiracy can ever be illegal will not be considered when it appears that more than one have been convicted.

An objection to the admission of testimony in a trial for conspiracy offered exclusively as against one of the defendants becomes immaterial if that defendant is acquitted.

Even if a letter addressed to one of the defendants charged with conspiracy were improperly taken from the mails the fact is not relevant to the question of the guilt of the conspirators.

While any evidence affecting a particular defendant in a trial of several for conspiracy may be important to him while on trial, it ceases to be so in the reviewing court, if that defendant was acquitted.

In this case it does not appear that the jury was coerced by the court into agreeing on the verdict or that the conviction of some of the

225 U. S.

Opinion of the Court.

defendants and acquittal of others was the result of an improper agreement between the jurors.

Where the jury render a verdict within the issues, testimony of jurors themselves should not be received to show matters which essentially inhere in the verdict and necessarily can receive no corroboration.

35 App. D. C. 451, affirmed.

THE facts, which involve the validity of a trial, conviction and sentence for conspiracy under § 5440 Rev. Stat. are stated in the opinion.

*Mr. A. S. Worthington*, for the petitioners.

The *Solicitor General* for the United States.

MR. JUSTICE McKENNA delivered the opinion of the court.

This writ brings up for review a judgment of the Court of Appeals of the District of Columbia affirming a conviction of petitioners for the crime of conspiracy.

The main question in the case is the jurisdiction of the Supreme Court of the District of Columbia, where the trial and conviction were had, depending upon the place where the conspiracy, if any, was formed and the overt acts, if any, were done to effect its purpose. What the indictment charges is a fundamental element in the question.

Before proceeding to consider the indictment it may be well to state the laws and conditions to which the conspiracy charged in the indictment relates. By acts of Congress dated, respectively, March 3, 1853, 10 Stat. 244, 246, c. 145, and February 14, 1859, 11 Stat. 383, c. 33, the States of California and Oregon were granted, for the purpose of public schools, all of sections 16 and 32 in each township, with certain exceptions unimportant to mention. The States authorized the sale of the land so granted for \$1.25 per acre, California limiting the right of pur-



chase by one person (of land not suitable for cultivation) to 640 acres. The limitation in Oregon was 320 acres. The States required applicants to be citizens of the United States and of the States, that the purchases be for their own benefit, and a statement from each applicant that he had made no contract for the sale or disposition of the lands applied for.

Subsequent to these grants and prior to the year 1897 most of the lands had been taken up by settlers. Those not taken up were in the mountainous regions and were regarded as valueless.

By an act of Congress approved March 3, 1891, 26 Stat. 1093, 1103, c. 559, the President was authorized to create forest reservations, and by a subsequent act it was provided "that in cases in which a tract covered by an unperfected *bona fide* claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent."

The charge of the indictment is that the defendants in the case conspired to use the privilege of this act after fraudulently acquiring school sections from California and Oregon, and conspired to corrupt or use the officers of the General Land Office in Washington to make or facilitate the selection in exchange for such sections lands of the United States, and thereby defraud the United States.

Its allegations, omitting repetitions and redundancies, are as follows:

Frederick A. Hyde and John A. Benson were engaged from the 24th of October, 1901, until the 1st of February, 1904, in the city of San Francisco, State of California, in the business of obtaining from the United States and appropriating, in the manner hereinafter set forth, the possession and use of and title to public lands of the United

5 U. S.

Opinion of the Court.

states outside forest reserves established under the laws of the United States, in exchange for and in lieu of lands lying within such reserves and known as school lands, by them obtained from the States of California and Oregon in the manner hereinafter set forth. Henry P. Dimond and post H. Schneider were, during said periods, employés of Hyde and Benson in the matter of their business, Dimond as agent and attorney and Schneider as agent. Woodford D. Harlan and William E. Valk were, before and during such period, employés of the United States, holding official positions in the General Land Office at the city of Washington, in the District of Columbia, paid salaries as such, and, respectively, charged with duties pertaining to the disposal of the public lands lying outside of forest reserves established under the laws of the United States and open to selection under said laws, in exchange for and in lieu of lands within such reserves.

Benjamin F. Allen, was before and during such period, an employé of the United States, that is, a forest superintendent, and Grant I. Taggart a forest supervisor.

Hyde, Benson, Dimond and Schneider during such period, to-wit, on the 30th day of December, 1901, at Washington, D. C., unlawfully did conspire, combine and confederate together, and with other persons unknown, to defraud the United States out of the possession and use of and title to divers tracts of the public lands of the United States open and to be opened to selection in lieu of lands within forest reserves established and to be established in California and Oregon by means of false and fraudulent practices whereby Hyde and Benson were to obtain fraudulently from those States title to and possession of school lands within the limits of such reserves which were open to purchase from those States by residents thereof, being citizens of the United States or having declared their intention to become such, under the laws thereof, in quantities for each resident not exceeding 640

acres in California and 320 acres in Oregon, upon appropriate application supported by affidavit showing his qualifications to make such purchase, and, amongst other things (as before and during the said period was required by the laws of the said States), his intention to purchase in good faith and for his own benefit and that he had made no contract or agreement to sell the same. These applications were to be made in the names of fictitious persons and in the names of persons not really desiring or qualified to purchase said lands. The use of the last-mentioned names for such purpose Hyde and Benson were to procure by paying or causing to be paid to such persons small sums of money, and by falsely representing or causing to be represented to some of them that they were merely disposing of their rights to purchase such school lands.

The proposed use of fictitious affidavits is set out at considerable length, with the names that were used, the purpose being charged to obtain the lands according to the conspiracy detailed, obtain title from the United States with the intention of disposing of the same to the general public, and to defraud the United States "to the profit, gain and use of themselves."

Hyde and Benson were, during said period, to induce and procure and take advantage of the fact that they had induced and procured the said Woodford D. Harlan and William E. Valk, by paying them respectively divers sums of money for that purpose, corruptly to furnish information concerning the status in the General Land Office of all matters pertaining to their said business and especially to their false and fraudulent selections, and to expedite, contrary to their duty, the matters which should be pending in the Land Office pertaining to their business and the examination of such selections made and to be made by Hyde and Benson and by securing the approval thereof in advance and otherwise favoring and assisting Hyde and Benson in their fraudulent practices. This

225 U. S.

Opinion of the Court.

charge is dwelt upon at some length, and it is charged, besides, that Allen, the forest superintendent, and Taggart, the forest supervisor, had been and were to be corrupted, whereby they were to give such advice and information as to including or not including lands within a forest reserve as should be to the interest of Hyde and Benson.

Hyde, Benson, Dimond and Schneider, as a part of their conspiracy, were to secure by the means detailed and other means too numerous and diverse to be described, the establishment of forest reserves in California and Oregon in such localities in those States as would best effect the object of the conspiracy, by reason of the fact that large quantities of school lands in such localities were still undisposed of and open to purchase from said States, respectively.

Dimond, for money and other valuable considerations paid by Hyde and Benson, was, as attorney, to aid and assist Hyde and Benson in their business by appearing in their behalf before the appropriate officers of the Department of the Interior and of the General Land Office from time to time to urge speedy action by those officers upon the matters there pending pertaining to their said business and to further said business in the manner hereinafter shown, he, Dimond, knowing full well the fraudulent character of the business.

Schneider, in the capacity of employé of Hyde and Benson, was to aid and assist them by obtaining in the States of California and Oregon the fictitious affidavits and the affidavits of those persons who would permit the use of their names as stated, he knowing while so assisting the fraudulent character of the applications and the purpose for which they and the affidavits were to be used.

The indictment contains the description of the lands which it was the object of the conspiracy to secure, amounting to 6,800 acres, of which 3,400 acres were selected in

the name of C. W. Clarke; all of the lands being in forest reserves then lately before established under the laws of the United States.

On December 30, 1901, Dimond entered his appearance in the General Land Office as attorney for Clarke.

The other counts in the indictment, numbering 41, are substantially alike in their general allegations, differing as to their incidents. They charge, as in the first count, a conspiracy formed in Washington by the same parties and for the same purpose and to be executed in the same way in regard to lands in the various districts of the respective States, and that in pursuance of the conspiracy certain overt acts were done. Most of the overt acts charged consisted in the filing in the General Land Office by Dimond, as attorney for Hyde, his appearance in different selection cases, in some of which he urges and sets forth the reasons for favoring a speedy action.

In counts 35 to 40, both inclusive, the overt act charged is the payment of money by Benson to either Valk or Harlan, alleged in the indictment to be salaried officials of the General Land Office and charged with duties pertaining to the exchange of lands of private claim or ownership included in a forest reserve or other public land.

Two overt acts are charged against Hyde, one of which was committed on July 29, 1903, by causing to be transmitted by mail from the United States land office at Vancouver to the Commissioner of the General Land Office at Washington a written notification to the Commissioner, signed by Hyde for C. W. Clarke, that the latter appealed to the Secretary of the Interior from a certain decision of the Commissioner, with an assignment of errors, and the second of which was that Hyde, on March 31, 1902, caused to be presented by the hand of Dimond a paper signed by him, Hyde, notifying the Commissioner that one S. E. Kieffer was authorized and appointed as Hyde's

225 U. S.

Opinion of the Court.

agent to post notices on the ground described in a certain application and to make affidavit of posting.

Shortly after the indictment was found removal proceedings were instituted against Hyde and Dimond before a United States Commissioner in California, who, after taking testimony, ordered their removal. The United States Circuit Court denied writs of *habeas corpus* and *certiorari*, and its action was affirmed by this court. *Hyde v. Shine*, 199 U. S. 62.

There was a demurrer to the indictment, which was overruled, the ruling upon which was affirmed by the Court of Appeals of the District. *Hyde v. United States*, 27 App. D. C. 362.

Motions to require the Government to elect on which counts it would proceed were filed and also motions for a bill of particulars. The latter was granted and the bill of particulars filed; the former was overruled.

Pleas in abatement were filed, to which demurrers were sustained, and finally the defendants were arraigned and pleas of not guilty made and the case proceeded to trial. Benson and Dimond were acquitted. Hyde and Schneider were convicted on all counts except 29 and 33, which were abandoned by the Government. Hyde was sentenced to two years' imprisonment and to pay a fine of \$10,000, and Schneider was sentenced to imprisonment for one year and two months and to pay a fine of \$2,000.

Their conviction and sentence were affirmed by the Court of Appeals. *Hyde v. United States*, 35 App. D. C. 51.

The case is here on *certiorari*.

The Attorney General assented to the granting of the writ, he saying that "the determination of this case depends upon the principles of law governing conspiracy," and that in view of the decisions of the lower courts and of the numerous prosecutions under the conspiracy statute, "it was of vital importance to the United States, as

well as to its citizens, that these principles be definitely settled by this court."

The petitioners asked the court to review the case for the purpose of having it decide certain questions of law which they characterized as "important and fundamental," one of which, counsel says, granting the writ took out of the case. Of those remaining one is "as to the effect of an overt act in giving jurisdiction in an indictment for conspiracy under section 5440;" and the other is "as to the effect of overt acts by some of the accused in depriving the petitioners of the benefit of the statute of limitations."

There are other questions arising from the conduct of the trial and upon which separate briefs are filed. We postpone their consideration until after the more important questions, which induced the *certiorari*, are discussed.

First, as to the overt acts in giving jurisdiction:

It will be observed that the indictment charges that the conspiracy was formed in the District of Columbia and that certain of the overt acts were performed there and others in California. A question arose at the termination of the trial and before the case was submitted to the jury as to whether the charge of the indictment was sustained. Defendant moved to take the case from the jury because there was no evidence to support the allegation that the defendants conspired within the District of Columbia. The court denied the motion, but said in passing on it that it was "not claimed on the part of the Government that the defendants had conspired within this District in any other sense than that overt acts were committed by them here." The contention was, the court said further, "that if any overt act was committed here the defendants thereby conspired here." So understanding the contentions and the proof, the court expressed its views as follows: "If these defendants got together in California and planned to defraud the United States out of its lands by the means charged in the indictment, and

225 U. S.

Opinion of the Court.

in pursuance of that plan sent Dimond here to get the titles from the Government, they were acting within the District of Columbia as much as if they had come and done the thing themselves." And subsequently the United States Attorney assented to the proposition that the Government could not prevail except on the theory that it was sufficient to show an overt act in the District of Columbia, and the court said "that if that theory was wrong, of course they failed."

The question, therefore, is presented as to the venue in conspiracy cases, whether it must be at the place where the conspiracy is entered into or whether it may be at the place where the overt act is performed, the Sixth Amendment of the Constitution of the United States requiring all criminal prosecutions to be in the "district wherein the crime shall have been committed."

The crime of conspiracy is defined by § 5440 of the Revised Statutes as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years, or to both fine and imprisonment in the discretion of the court."

It is contended by the defendants that the conspiracy—the union in an unlawful purpose—constitutes the crime and that the requirement of an overt act does not give the offense criminal quality or extent, but that the provision of the statute in regard to such act merely affords an opportunity to withdraw from the design without incurring its criminality (called in the cases a *locus penitentiae*). The following, among other cases, are cited in support of this view: *United States v. Britton*, 108 U. S. 199, 204; *Pettibone v. United States*, 148 U. S. 197, 203;



*Dealy v. United States*, 152 U. S. 539, 547; *Bannon v. United States*, 156 U. S. 464-468-469, and the opinion of this court when this case was here before, 199 U. S. 62-76.

It must be conceded at the outset that there is language in those cases that, considered by itself, justifies the contention based upon them. In *United States v. Britton*, for instance—and the language of the case is resorted to for the genesis of the doctrine and makes strongest for the contention—Mr. Justice Woods, speaking for the court, said:

“The offence charged in the counts of this indictment is a conspiracy. This offence does not consist of both the conspiracy and the acts done to effect the object of the conspiracy, but of the conspiracy alone. The provision of the statute, that there must be an act done to effect the object of the conspiracy, merely affords a *locus penitentiæ*, so that before the act is done either one or all of the parties may abandon their design, and thus avoid the penalty prescribed by the statute. It follows as a rule of criminal pleading that in an indictment for conspiracy under section 5440, the conspiracy must be sufficiently charged, and that it cannot be aided by the averments of acts done by one or more of the conspirators in furtherance of the object of the conspiracy. *Reg. v. King*, 7 Q. B. 782; *Commonwealth v. Shedd*, 7 Cush. 514.”

The case was followed in *Pettibone v. United States* to the effect “that the conspiracy must be sufficiently charged, and cannot be aided by averments of acts done by any one or more of the conspirators in furthering the object of the conspiracy.”

In *Dealy v. United States* it is said that “the gist of the offense is the conspiracy. . . . Hence, if the conspiracy was entered into within the limits of the United States and the jurisdiction of the court, the crime was then complete, and the subsequent overt act in pursuance thereof may have been done anywhere.”

225 U. S.

Opinion of the Court.

Indeed, it must be said that the cases abound with statements that the conspiracy is the "gist" of the offense or the "gravamen" of it, and we realize the strength of the argument based upon them. But we think the argument insists too exactly on the ancient law of conspiracy, and does not give effect to the change made in it by § 5440, *supra*. It is true that the conspiracy, the unlawful combination, has been said to be the crime, and that at common law it was not necessary to aver or prove an overt act; but § 5440 has gone beyond such rigid abstraction and prescribes, as necessary to the offense, not only the unlawful conspiracy, but that one or more of the parties must do an "act to effect" its object, and provides that when such act is done "all the parties to such conspiracy" become liable. Interpreting the provision, it was decided in *Hyde v. Shine*, 199 U. S. 62, 76, that an overt act is necessary to complete the offense. And so it was said in *United States v. Hirsch*, 100 U. S. 33, recognizing that while the combination of minds in an unlawful purpose was the foundation of the offense, an overt act was necessary to complete it. It seems like a contradiction to say that a thing is necessary to complete another thing and yet that other thing is complete without it. It seems like a paradox to say that anything, to quote the Solicitor General, "can be a crime of which no court can take cognizance." The conspiracy, therefore, cannot alone constitute the offense. It needs the addition of the overt act. Such act is something more, therefore, than evidence of a conspiracy. It constitutes the execution or part execution of the conspiracy and all incur guilt by it, or rather complete their guilt by it, consummating a crime by it cognizable then by the judicial tribunals, such tribunals only then acquiring jurisdiction.

A question may be raised as to the extent of the agency between conspirators, but we need not enter into that broad inquiry. As far as the case at bar is concerned, it

may be admitted that the act must have the conspiracy in view and have some power to effect it. In the present case the field of operation and its consummation were to be and were in the States of California and Oregon and in the District of Columbia, where the General Land Office is situated. The action of the latter was to be induced or influenced; and this might be through deception, it might be through fraud, or it might be through innocent agents and acts of themselves having no illegality, but effectually causing and moving official action to the consummation of the end designed and contemplated. Overt acts of all these kinds are charged. The bribery and deception of the officers, the intervention of attorneys and the seemingly harmless mailing of information and directions all are charged and all had some relation to the scheme devised and were steps to its accomplishment. The powers of the Land Office were necessarily to be invoked and proceedings therein instituted and prosecuted by acts innocent indeed of themselves, taking only criminal taint from the purpose for which they were done. Indeed, is not this so of acts done in the execution of any crime? Discharging a loaded pistol at a target is an innocent pastime; discharging a loaded pistol at a human being with felonious intent takes a quality from such intent and may constitute murder.

If the unlawful combination and the overt act constitute the offense, as stated in *Hyde v. Shine*, marking its beginning and its execution or a step to its execution, § 731 of the Revised Statute must be applied. That section provides that "when any offense against the United States is begun in one judicial district and completed in another it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined and punished in either district, in the same manner as if it had been actually and wholly committed therein." This provision takes an emphasis of signification from the fact

225 U. S.

Opinion of the Court.

that it was originally a part of the same section of the statute which defined conspiracy—that is § 30 of the act of March 2, 1867, 14 Stat. 484, c. 169. Nor has the provision lost the strength of meaning derived from such association by its subsequent separation, for it is provided in § 5600 of the Revised Statutes that “the arrangement and classification of the several sections of the revision have been made for the more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the Title, under which any particular section is placed.”

Section 731 was applied in *In re Palliser* (136 U. S. 257) to the offense of unlawfully using the mails. It was decided that an offense committed by mailing a letter was continued in the place where the letter was received, and triable in the District Court of the United States having jurisdiction in such place. The case was cited in *Benson v. Henkel*, 198 U. S. 1, 15, which was concerned with extradition proceedings against one charged with the crime of bribery, alleged to have been committed by mailing a letter in the State of California, directed to certain officers of the General Land Office in the District of Columbia. It was objected to the removal of the defendant to the District of Columbia for trial that the crime was committed, if at all, in California. The contention was held untenable under the ruling in *In re Palliser*. The strong expression of counsel for the defendants may, therefore, be turned from derision of to the support of the view, that crime, even conspiracy, may be carried from one place to another in the “mail pouches.” And we may ask in passing, may not a conspiracy be formed through the mails, constituted by letters sent by persons living in different States? And, if so formed, we may further ask, to which State would the conspiracy be assigned? In such cases must the law come forward with some presumption or fiction, if you

please, to give locality to an union of minds between men who were never at the same place at the same time? The statute cuts through such puzzles and makes the act of a conspirator, which necessarily has a definite place without the aid of presumption or fiction, the legal inception of guilt inculcating all and subjecting all to punishment.

*In re Palliser* was also applied in *Burton v. United States*, 202 U. S. 344, in which it was held that there was jurisdiction in Missouri of a criminal charge against Burton for agreeing in that State to receive prohibited compensation for certain services to be rendered by him while he was a United States Senator, the offer being carried to Missouri by an agent and accepted there, Burton not being personally present in the State. The court said, through Mr. Justice HARLAN (p. 387): "The constitutional requirement is that the crime shall be tried in the State and District where committed, not necessarily in the State or district where the party committing it happened to be at the time. This distinction was brought out and recognized in *Palliser's* case, 136 U. S. 257, 265."

And, after stating that the agreement between the parties was completed at the time of the acceptance of Burton's offer at St. Louis, he added: "Then the offense was committed, and it was committed at St. Louis, notwithstanding the defendant was not personally present in Missouri when his offer was accepted and the agreement was completed." And the contention was rejected "that an individual could not, either in law or within the meaning of the Constitution, commit a crime within a State in which he is not physically present at the time the crime is committed."

This court has recognized, therefore, that there may be a constructive presence in a State, distinct from a personal presence, by which a crime may be consummated. And if it may be consummated it may be punished by an exercise of jurisdiction; that is, a person committing it may

225 U. S.

Opinion of the Court.

be brought to trial and condemnation. And this must be so if we would fit the laws and their administration to the acts of men and not be led away by mere "bookish theorick." We have held that a conspiracy is not necessarily the conception and purpose of the moment, but may be continuing. If so in time, it may be in place—carrying to the whole area of its operations the guilt of its conception and that which follows guilt, trial and punishment. As we have pointed out, the statute states what in addition to the agreement is necessary to complete the measure of the offense. The guilty purpose must be put into a guilty act.

We realize the strength of the apprehension that to extend the jurisdiction of conspiracy by overt acts may give to the Government a power which may be abused, and we do not wish to put out of view such possibility. But there are counter considerations. It is not an oppression in the law to accept the place where an unlawful purpose is attempted to be executed as the place of its punishment, and rather conspirators be taken from their homes than the victims and witnesses of the conspiracy be taken from theirs. We must not, in too great a solicitude for the criminal, give him a kind of immunity from punishment because of the difficulty in convicting him—indeed, of even detecting him. And this may result, if the rule contended for be adopted. Let him meet with his fellows in secret and he will try to do so; let the place be concealed, as it can be, and he and they may execute their crime in every State in the Union and defeat punishment in all. And the suppositions are not fanciful, as illustrated by a case submitted coincidently with this. *Brown v. Elliott*, *post*, p. 392. The possibility of such a result repels the contention and demonstrates that to yield to it would carry technical rules and rigidity of reasoning too far for the practical administration of criminal justice. We see no reason why a constructive presence should not be assigned

to conspirators as well as to other criminals; and we certainly cannot assent to the proposition that it is not competent for Congress to define what shall constitute the offense of conspiracy or when it shall be considered complete and do with it as with other crimes which are commenced in one place and continued in another. Nor do we think that the size of our country has become too great for the effective administration of criminal justice. We held in *Armour Packing Company v. United States*, 209 U. S. 56, that the transportation of merchandise for less than the published rate is, under the Elkins Act, a continuing offense, and that the Sixth Amendment of the Constitution of the United States, providing that an accused shall be tried in the State and District where the crime is committed, did not preclude a trial of the offense in any of the districts through which the transportation was conducted. See also *Haas v. Henkel*, 216 U. S. 462, 473.

Cases are cited which oppose the views we have expressed and others to support them. In *Robinson v. United States*, in the Circuit Court of Appeals of the Eighth Circuit, the question was directly presented. 172 Fed. Rep. 105. The conspiracy passed on was alleged in the indictment to have been entered into in Cincinnati and Chicago, the overt acts set out were proved to have been committed in Minneapolis and the evidence showed that it was the intention of the conspirators to carry out their conspiracy at Minneapolis. The trial court was moved to direct a verdict for the defendants if the jury found that the agreement was entered into in Cincinnati and Chicago and was complete when the parties went into the district of Minnesota. The instruction was refused and, the defendants having been convicted, the refusal was assigned as error, in the Circuit Court of Appeals, based on the provisions of the Constitution of the United States giving those accused of crime the right to trial by jury of the State and district wherein the crime shall have been committed.

225 U. S.

Opinion of the Court.

The court, passing on the ruling of the trial court, said by District Judge Carland (p. 108) and we quote its language to avail ourselves not only of the citation of cases, but of the comments upon them:

“At common law the venue in conspiracy could be laid in any county in which it could be proven that an overt act was done by any one of the conspirators in furtherance of their common design. 1 Archbold's Criminal Practice and Pleading (8th ed.) p. 226. Where a conspiracy was formed at sea, and an overt act done in Middlesex county, it was held that the venue was properly laid in that county. *The King v. Bresac and Scott*, 4 East, 164. In the case of *King v. Bowes and Others*, referred to in the above case, the conspirators were tried in Middlesex, though there was no proof of an actual conspiracy in that county, and the acts and doings of some of them were wholly in other counties. In *People v. Mather*, 4 Wend. (N. Y.) 261, 21 Am. Dec. 122, Marcy, J., in delivering the opinion of the court, said:

‘I admit that it is the illegal agreement that constitutes the crime. When that is concluded the crime is perfect, and the conspirators may be convicted if the crime can be proved. No overt act need be shown or ever performed to authorize a conviction. If conspirators enter into the illegal agreement in one county, the crime is perpetrated there, and they may be immediately prosecuted; but the proceedings against them must be in that county. If they go into another county to execute their plans of mischief, and there commit an overt act, they may be punished in the latter county without any evidence of an express renewal of their agreement. The law considers that wherever they act there they renew, or perhaps, to speak more properly they continue, their agreement, and this agreement is renewed or continued as to all whenever any one of them does an act in furtherance of their common design. In this respect, conspiracy resembles



treason in England, when directed against the life of the King. The crime consists in imagining the death of the King. In contemplation of law, the crime is committed wherever the traitor is and furnishes proof of his wicked intention by the exhibition of any overt act.'

"To the same effect are *Commonwealth v. Gillespie*, 7 Serg. & R. (Pa.) 469, 10 Am. Dec. 475; *Noyes v. State*, 41 N. J. Law, 418; *Commonwealth v. Corlies*, 3 Brewst. (Pa.) 575.

"If this was the law of venue in conspiracies at common law, where proof of an overt act was not necessary to show a completed offense, the same rule can be urged with much greater force under section 5440, Rev. St. U. S., as the offense described therein for all practical purposes is not complete until an overt act is committed. . . . It seems clear, then, that whether we place reliance on the common law or on section 731, Rev. St., the venue of the offense was correctly laid in the district of Minnesota, and the evidence sustained the allegation of the indictment."

To the cases cited by the learned court these may be added: *State v. Nugent*, 77 N. J. L. 84, 86; *Bloomer v. State*, 48 Maryland, 521; *People v. Arnold*, 46 Michigan, 268, 275; *American Insurance Co. v. State*, 75 Mississippi, 24; *State v. Hamilton*, 13 Nevada, 386; *International Harvester Co. v. Commonwealth*, 137 Kentucky, 668, 674; *Pearce v. Territory*, 11 Oklahoma, 438; *Ex parte Rogers*, 10 Tex. App. 655, and *Raleigh v. Cook*, 60 Texas, 438.

There are cases in the lower Federal courts which may be cited for and against the demarcation of the conspiracy and the overt act. To compare and comment on them would extend this opinion to too great length. We may say the same of the special citation of cases by defendants.

But it is said that the crime charged is not the crime proved, even if it be assumed that the overt act is part of the crime of conspiracy under § 5440. In support of

225 U. S.

Opinion of the Court.

the contention it is said that the averment of the indictment is that the conspiracy itself was entered into in the District of Columbia and that the overt acts were committed there. It is conceded by the Government that the conspiracy was originally formed, not in the District of Columbia, but in the State of California, and we have seen that it was the view of the trial court that the defendants had not conspired within the District of Columbia "in any other sense than that overt acts were committed by them" there.

The contention is answered by the views which we have already expressed. As the overt acts give jurisdiction for trial, it is not essential where the conspiracy is formed so far as the jurisdiction of the court in which the indictment is found and tried is concerned. This is established by the cases which have been cited, and the question will be considered further in *Brown v. Elliott* and *Moore v. Elliott*, cases submitted coincidentally with this, *post*, p. 392.

The fifth, sixth, seventh and eighth assignments of error invoke the statute of limitations in behalf of Hyde and Schneider.

The plea of the statute as affected by overt acts was considered in *United States v. Kissel*, 218 U. S. 601, where it was declared that a conspiracy may be a continuing one, and the doctrine is applicable to the case at bar unless there is something special in the facts regarding Hyde and Schneider which constitutes a defense as to them. This is asserted. It is contended that the relation of Schneider to the conspiracy was only that of one rendering service as a servant of his master (Hyde), in consideration of the salary paid to him by his master, and that he had not within three years before the finding of the indictment participated in any way in the carrying out of the master's scheme, the subject of the conspiracy. And from this it is contended the question arises whether Hyde is not also entitled to the protection of the statute of limitation

in so far as he is charged with conspiring with his employé, Schneider.

But the fact that a salary was paid by one to another would not preclude a conspiracy between them. It might, indeed, mark a more humble criminal desire, and one which preferred a certain reward rather than take chances in the success of a criminal enterprise, and it was certainly not inconsistent with a full and active participation in the scheme. Indeed, Schneider, in a confession which we shall presently refer to, stated that a salary and the certainty of employment was his inducement.

The Government contends that there was such participation originally and to a time within the statute, and that there is nothing to show a repudiation of or withdrawal from the conspiracy by him before 1902, when he made a partial disclosure of the conspiracy to the Government. But upon this the Government frankly says it cannot rely for an affirmance of the judgment, in view of the charge of the court to the jury.

The court charged the jury in substance that if Schneider had engaged in the conspiracy "back of the three year period" and the conspiracy contemplated that acts should be done from time to time through a series of years until the purposes of the conspiracy should be accomplished, although he, Schneider, did not do anything within the three year period but "remained acquiescent, expecting and understanding" that further acts should be performed, they, if performed, would be his acts "and would have the same effect against him as if he had done them himself. He would still be acting through his colleagues. He might be playing his part by keeping still as much as he did formerly by acting."

The contention of the defendants is that the statute begins to run from the last overt act within three years from the formation of the conspiracy within which there was *conscious participation*. (Italics ours.) The Govern-

225 U. S.

Opinion of the Court.

ment makes the counter contention that however true this may be as to accomplished conspiracies it is not true of one having continuity of purpose and which contemplated the performance of acts through a series of years. And that such a distinction can exist, we have seen, is decided and illustrated in *United States v. Kissel*. And necessarily so. Men may have lawful and unlawful purposes, temporary or enduring. The distinction is vital and has different consequences and incidents. The conspiracy accomplished or having a distinct period of accomplishment is different from one that is to be continuous. If it may continue it would seem necessarily to follow the relation of the conspirators to it must continue, being to it during its life as it was to it the moment it was brought into life. If each conspirator was the agent of the others at the latter time he remains an agent during all of the former time. This view does not, as it is contended, take the defense of the statute of limitations from conspiracies. It allows it to all, but makes its application different. Nor does it take from a conspirator the power to withdraw from the execution of the offense or to avert a continuing criminality. It requires affirmative action, but certainly that is no hardship. Having joined in an unlawful scheme, having constituted agents for its performance, scheme and agency to be continuous until full fruition be secured, until he does some act to disavow or defeat the purpose he is in no situation to claim the delay of the law. As the offense has not been terminated or accomplished he is still offending. And we think, consciously offending, offending as certainly, as we have said, as at the first moment of his confederation, and consciously through every moment of its existence. The successive overt acts are but steps toward its accomplishment, not necessarily its accomplishment. This is the reasoning of the *Kissel Case* stated in another way. As he has started evil forces he must withdraw his support

from them or incur the guilt of their continuance. Until he does withdraw there is conscious offending and the principle of the cases cited by defendants is satisfied.<sup>1</sup>

But it is contended that under the instructions of the court Schneider was involved in criminality by overt acts done not only after he had ceased to be in Hyde's employment in any capacity, but after he had disclosed that there was a conspiracy against the Government. It was testified by Woodford D. Harlan that disclosure of frauds had come through one J. A. Zabriskie, he, however, knowing nothing about the matters except as informed by Schneider. The matter was referred to an agent who reported conversations with Schneider giving detailed information of the frauds and the manner by which they were accomplished. This report was received at the General Land Office in November, 1902. It does not appear what became of the report. The recollection of the witness was that he saw the report first, and he testified that he took it to the clerk who was distributing the mail, but for what purpose it does not appear. He never saw it again until one day during the trial. He, however, wrote to Benson about it, and after having seen weekly statements of certain special agents who were investigating the Schneider charges, he notified Benson. This seems to have been in March, 1903. Later, in October and November, 1903, he also wrote Benson at the suggestion of detective Burns.

There are overt acts charged subsequent to the disclosure made by Schneider, and it is contended that by the instruction embodied in the seventh assignment of error Schneider was continued in the conspiracy by overt acts committed after his disclosure to the agent of the Land

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<sup>1</sup> *Ex parte Black*, 147 Fed. Rep. 832, 840, and same case in 160 Fed. Rep. 431; *Ware v. United States*, 154 Fed. Rep. 577; *United States v. Eccles*, 181 Fed. Rep. 906; *United States v. Greene*, 115 Fed. Rep. 343, 350; *Ochs v. The People*, 25 Ill. App. 379, same case, 124 Illinois, 399.

225 U. S.

Opinion of the Court.

Department had been communicated to the Commissioner of the General Land Office.

The instruction to which this effect is attributed is as follows:

"Now if he [Schneider] had stood by that and had gone on and disclosed all he knew about the matter, and said: 'I will have nothing more to do with this matter,' nothing that could have been done by the others after that could affect him at all. He would have been out of it; he would have repudiated it. As bearing on the effect of what he did there if you find he did it, you are to consider what he did afterwards. If, after having made this disclosure as far as he did, he shut his mouth and said: 'I will not say anything more about this matter; the Government shall not get anything more out of me,' that is not an act by him in furtherance of the conspiracy, but it is a piece of evidence to be considered by you as bearing on the question whether he was acquiescent—what his attitude of mind toward the conspiracy was.

"If he had stood on his disclosure, you might have said: 'Well, he is out of it from now on'—but in connection with that you are to consider what he said afterwards. If you find that he closed his mouth and refused to say anything more about the matter and kept still in the interest of the others, you would have a right to say that that showed that he was still acquiescent in the matter. It would neutralize, if you choose to treat it so, the effect of his former declaration, that he did know, and was willing to disclose."

The instruction does not sustain the contention based upon it. The court submitted to the jury the effect of repudiation, and whether it was adhered to, as evidence of Schneider's further participation in the conspiracy by the overt acts done subsequent to the date of his disclosure. Acts prior to that time are within the principles we have announced, and the only question under the

instruction is whether there was an acquiescence which embraced the later acts, and this, we think, under the circumstances, was for the jury to determine.

The other questions in the case we shall now proceed to consider.

It is contended (ninth assignment of error) that the court erred in sustaining the demurrers to the pleas in abatement of Hyde and Schneider.

The defendants demurred to the indictment, which was overruled, and a special appeal was allowed to the Court of Appeals of the District and the ruling on the demurrer affirmed.

The case was remanded for further proceedings and the mandate was filed in the Supreme Court of the District April 26, 1906. Nearly two years afterwards (April 1, 1908) the defendants filed pleas in abatement, alleging irregularity in the making up of the list of jurors from which the grand jury which found the indictment was selected. The charge was that the commission to make a list of jurors appointed under § 198 of the District Code placed on the "list the names of persons many of which were selected not by themselves or by any of them, but by some other person or persons whose names are" to the defendant unknown, and that on the 16th of November, 1903, the commissioners met in the District of Columbia and then and there made an order by which they undertook to appoint one James A. Harstock secretary of said commission, and undertook by a further order to give him the right of access to the jury box provided in accordance with § 200 of the Code, and that he took the box, unaccompanied by any other person into a room in the City Hall and there opened it and took out of it all of the pieces of paper therein containing the names of the jurors, and from day to day during several successive days replaced in the box such names as he deemed fit and thereupon returned it to the custody of the clerk. The

225 U. S.

Opinion of the Court.

names of twenty-three persons were drawn from the box and constituted the grand jury which found the indictment. In consequence of this it was averred that the grand jury was not a legal body.

Demurrers were filed and sustained to the pleas, and to support the ruling of the court the Government cites *Agnew v. United States*, 165 U. S. 36. The defendants contest the application of the case on two grounds: (1) that under the District Code a plea in abatement comes properly after a demurrer to the indictment and before pleas to the matter of the indictment, such as not guilty or special pleas; and (2) that whether a plea is seasonably filed cannot be resisted by demurrer but only by a motion to strike out.

Both propositions may be formally correct, but do not preclude the court from itself noticing an unreasonable delay or treating the demurrer as raising that objection. And by concession of counsel that is what the court, in effect, did. Indeed, in the "points and authorities" filed with the demurrer it is urged that "the said pleas are not filed within a reasonable time." There was certainly unreasonable delay. It is said in the *Agnew Case* that pleas in abatement on account of irregularities in selecting and impaneling a grand jury which did not relate to the competency of individual jurors must be pleaded with strict exactness and that a defendant must take the first opportunity in his power to make the objection. The indictment in that case was returned December 12, 1895; the plea in abatement was filed on the 17th of that month. It was held to have been filed too late.

In the case at bar four years elapsed between the finding of the indictment and the filing of the plea, two years after the mandate of the Court of Appeals sustaining the action of the trial court upon the demurrer and after a bill of particulars had been demanded and furnished. The delay is not attempted to be explained.



It is extremely doubtful whether the pleas were not defective under the *Agnew Case*. In that case it was alleged that the irregularities complained of tended to the injury and prejudice of the defendant, no grounds, however, being assigned for the conclusion, and the record did not exhibit any. In the case at bar the plea is not even that specific. It is not shown that any juror was disqualified, nor is it shown that the grand jury was composed of jurors not selected by the commission. It is alleged, it is true, that names which had been put in the box by the commissioners had been taken out by Harstock, and that he put back those only that he deemed fit and proper. It follows, of course, from this that had all of the original names been in the box the grand jury might have been differently composed, but from this it cannot be inferred that injury or prejudice resulted to the defendants.

The tenth assignment of error is directed against the instruction of the court that the jury might convict any one of the defendants alone, including Hyde. In explanation of the instruction the court said to the jury that as to each defendant evidence was admitted which was not admitted against the others, and instanced as an example an alleged confession of Schneider which, the court said, was admitted against him only. "The same would be true," the court said, "as to Dimond, as to whom a great deal of evidence was admitted that was not received against the other defendants." And further: "So that it is true, as I stated in a proposition for the benefit of counsel, that there may be a verdict against any one of the defendants, whether one or more, as to whom the evidence submitted, and received against him or them, proves that he or they conspired as charged, provided any overt act is also proved."

If there is confusion in the instruction it is easily resolved. It is clear when read in connection with other

225 U. S.

Opinion of the Court.

instructions that the court distinguished the purpose and effect of particular testimony and did not mean to say that there could be a conspiracy by one defendant alone. So regarding it, we pass to the consideration of the objection urged against it.

It is insisted that it is not competent in any case where two or more persons are charged with conspiracy, and all are on trial, to find a verdict against one of them only, in any aspect of the evidence, and, further, that as to the defendant Hyde there is no evidence in the case which justified a verdict against him alone, even if the principle announced by the court is in the abstract correct.

The immediate answer is that there was not a verdict against one defendant, and besides the argument of counsel is somewhat minute, and its criticism is based on a partial view of the instructions and of the evidence, which, we think, preclude the inferences which are deduced from the instructions.

The court's charge was necessarily very long and comprehensive, and a reproduction of it is not convenient, but certain of its general propositions may be stated. "Each count of the indictment," it was said, "charges the same conspiracy, and, in addition thereto, one or more overt acts alleged to have been done in pursuance of it. So that, stated in one way, these counts subsequent to the first count contain nothing new except the overt acts; and when you take those up one by one, the question is, if you have found the conspiracy in the first place, whether the overt acts charged were committed. If you do not find the conspiracy, of course the overt acts cannot be found."

The court emphasized the necessity of the proof of the conspiracy and stated that by it the overt acts were to be judged, saying, "An overt act must be one in pursuance of the conspiracy and one in furtherance of it;" and whether a certain act was in pursuance of it might depend entirely upon what the conspiracy was.

"The first question is," the court charged, "Did the defendants conspire at all? The second question is whether they conspired to accomplish the end alleged. The third question is, whether they conspired to accomplish that end by the fraudulent means alleged, so far as the indictment in that respect is necessary to be proved, referring to what has been already stated in that regard. The fourth question is, under each count, whether the overt act therein mentioned has been proved.

"Two other important questions must be determined in connection with the foregoing: One relating to the place, the other to the time. The conspiracy must have existed in the District of Columbia, and it must have existed and some overt act in pursuance of it must have been committed within three years next before the filing of the indictment."

And, assuming that the conspiracy was established and overt acts in furtherance of it shown in the District of Columbia, the court explained, "the conspiracy is here [the District of Columbia] just as truly as if the defendants were all here in person, doing those things with the common mind and purpose which contemplated them. In such circumstances the defendants would be conspiring together in the doing of each act because each act would have reference to the conspiracy. It would not be necessary that they should put their heads together and go over the terms of the conspiracy every time an act was done in furtherance of it. It would be enough if the act was an expression of their common understanding."

The court instructed the jury further as follows:

"Now, it has been suggested that if these men were guilty there were others just as guilty. That does not make any difference. The indictment itself, in one clause of it which I did not read to you, charges that these defendants conspired with each other and with other persons to the grand jury unknown. But that does not make any

225 U. S.

Opinion of the Court.

difference. If there are other persons who might have been prosecuted, and would have been liable, and they are not prosecuted, that is no concern of yours. You are only to consider the question of whether these defendants conspired in the way alleged, and whether the overt act was committed."

And the court charged the jury that some of the defendants could be convicted on one count and some on another count; that there was "practically one charge, although in so many counts. It is one conspiracy with allegations of different acts done in pursuance of it. . . . But you cannot split the matter up."

We think, therefore, that the instruction excepted to was in the interest of the defendants, not to their prejudice. It excluded from consideration as to each of them testimony which might possibly have no relation to him. It is true that the jury convicted Hyde and Schneider and acquitted Benson and Dimond. But, as said by the Government, "This does not signify that the evidence against Hyde and Schneider was of a different offense than that charged, but only that the proof against them was more conclusive than that against Benson and Dimond."

It is not necessary to review the cases cited by the defendants holding that conspiracy is the crime of at least two persons and that where all but one are acquitted there can be no legal conviction as to him, the acquittal of the others being tantamount to the finding of no conspiracy. All but one were not acquitted.

The next assignment of defendants is that the court erred in allowing the District Attorney, on the direct examination of witnesses for the Government, to examine them as to previous statements made by them to certain representatives of the Government and in permitting comment upon such statements as tended to show their truth.

This assignment is directed particularly against the examination of three witnesses, William E. Valk, S. J. Holsinger and Tillie A. Fleischauer. These witnesses, not remembering certain matters, were asked about conversations with him or of written statements made by the witnesses examined, for the purpose of refreshing their memory. This was the purpose declared at the time and was the ground of the ruling of the court. Objection was made, however, and it was urged and is now urged here, that this could not be done unless upon the ground of surprise and for the purpose of discrediting the witnesses. In support of the objection § 1073a of the District Code is cited in regard to the manner and extent of contradicting witnesses by proof of former statements. The court, however, permitted the examination solely as a means of refreshing the memory of the witnesses, and they, besides, admitted the truth of what was stated. We see no error in the ruling. Indeed, it may be said that as to two of the witnesses, their statements related to Benson alone, and by his acquittal, if the ruling was error, it became unimportant.

The next contention, constituting the twelfth assignment of error, is as to the refusal of the court to permit the defendants to prove that certain letters addressed to John P. Jones never reached the Dead Letter Office. This testimony, it is insisted, became significant and important to the defendants from the fact that the District Attorney had asked Schneider if he (Schneider) had not gone under the name of John P. Jones at the post office while in Mexico at a place called Allamos. On redirect examination he explained the reason to have been that he had suspected the postmaster at Tucson, that letters which had been written to him had not reached him, and that at the time mentioned his wife, who was at Tucson, addressed him as John P. Jones, but that nobody else had. He further testified that the letters he referred to were

225 U. S.

Opinion of the Court.

"right on the desk" (the desk in the court room) "in the possession of the Government." Upon the demand of counsel the District Attorney produced the letters. Thereupon counsel questioned Schneider as to the letters which were addressed to John P. Jones at Fuerte, Mexico, postmarked Tucson, Arizona. The District Attorney then asked counsel for defendants if he desired "to offer the envelopes in evidence," to which the answer was made: "No; I don't care to offer anything further in connection with that transaction, at present." The District Attorney then offered them. Objection was made but was subsequently withdrawn, the court saying, upon the witness stating that the address upon them was in his wife's handwriting, "They [the letters] are addressed to him in the name of John P. Jones. The envelopes may be received, if it is so agreed, for the purpose of showing the postmarks, etc. This I suppose to be in corroboration of the statements of the witness as to why he changed his name."

The District Attorney was then called as a witness by counsel for the defendants and testified that he had not seen the letters "until one day in court here," and that when reference was made to them "they were produced" to him "by Mr. Pugh." The latter being called said that they came into his "possession in an envelope taken from Secretary Hitchcock's safe some time after Mr. Burns withdrew from the case, or some time after he severed his government connection with it." Burns, he testified, was in San Francisco.

Dalzell was subsequently called as a witness to testify, as has been stated, and it was said by counsel for defendants, addressing the court, that the Government had brought out that Schneider had gone under an assumed name, and that the evidence tended to show that the "reason for that, or one reason for it, was that his mail was being tampered with," "but it leaves room for the

Government to contend that those letters have been to the Dead Letter Office, and have been opened there, and might have gotten in the possession of the Secretary of the Interior or Mr. Burns honestly. We offer to call this witness [Dalzell] for the purpose of closing that gap, and showing that necessarily somebody must have been committing a greater crime than is charged against any of these defendants, in robbing the mail." The District Attorney in effect disclaimed the purpose which was attributed to him and necessarily there was no gap to be closed, nor is it shown that any purpose was subsequently attempted, which the testimony would have precluded.

The possibility suggested by the testimony is not attempted to be justified by the Government, and gives a painful surprise, but we cannot see how proof of "a greater crime . . . in robbing the mails" was relevant to a decision of the charge then under consideration.

The thirteenth assignment of error is directed against an instruction of the court which opposed the contention of defendants that "the titles obtained from the States were perfectly and absolutely valid as to all persons and at all times, except as to the particular State which had given the title and which alone could assail it." The question involved in the contention is settled by the decision of the case when it was here on the proceedings in *habeas corpus*, 199 U. S. 62, 82 and 83.

The fourteenth assignment of error is that the court erred in refusing to instruct the jury that want of personal knowledge of the character of the land applied for, or that it was not adversely occupied, did not make the application void. It is contended that if the applicant believed the statements were true, the application was neither false nor fraudulent.

We answer the contention as the Court of Appeals did, "the question is immaterial, because the applications were fraudulent by reason of the agreement for transfer"—

225 U. S.

Opinion of the Court.

that is, the applicants were not buying for themselves, but for Hyde. We need not inquire whether the statutes required the affidavits to be made on personal knowledge.

Objection is made in other assignments of error to the comments of the court "that written evidence, letters, for instance, written by parties at the time, are entitled to peculiar consideration as evidence." And to the further comment as to certain anonymous letters attributed to Dimond, the court saying to the jury that they would have to consider whether he wrote them, and added the following: "That has been treated in the argument as a very important question, and justly so. You cannot fail to see the importance of that question. There are some of the letters that were typewritten, and there is one printed with a pen."

Any evidence affecting a particular defendant is important to him when on trial. It ceases to be so in a tribunal of review if he was acquitted, as Dimond was, and may be dismissed from further consideration. And we see no error in the comments of the court on the consideration to be given to written evidence. It was but the declaration of an abstract proposition. It was not an attempt to enforce some particular part of the testimony and to take from the jury their province of considering it all or weighing the respective parts. This is shown by the charge of the court, considered in its entirety.

In the seventeenth assignment of error defendants complain that they were not allowed to show by an examination of the jurors that the "verdict was the result of a bargain and was brought about by what, under the circumstances, amounted to coercion by the court."

The record shows the following:

"Monday, June 22, 1908, at 11:30 A. M., the jury returned to the courtroom and the foreman announced that they were unable to agree. The court thereupon instructed the jury to retire for further deliberation, and



make another effort to agree upon a verdict, charging them, however, that should they render a verdict it must be one to which they all freely agreed; that the law would not recognize a coerced verdict or one which was not the free expression of the views and opinions of the jurymen, and that if after another conscientious effort the jury still fail to agree they should return to the court and so state. That it was not the purpose of the court to unduly prolong their deliberations, and that if they could not conscientiously and freely agree upon a verdict they would be discharged."

At ten minutes before three o'clock they were brought into court and again declared that they were unable to agree, and the court instructed them further, after consultation with counsel for the Government and defendants, and to which no exception was made, suggesting a consideration of the possibility of the guilt of some of the defendants and not of others. The jury, shortly after they went out, announced their agreement, finding a verdict against Hyde and Schneider of being guilty "in manner and form as charged," and Benson and Dimond not guilty.

On motion of counsel the jury was polled as to Hyde and Schneider, respectively, and they answered guilty on certain counts and not guilty on the 29th and 33d counts.

The supposed misconduct of the jury was made a ground of new trial. Certain supporting affidavits were made by counsel upon information. Counsel respectively averred that they believed the information given them to be true and that it was received partly from one of the jurors and partly from a person who had conferences with another; and that two of the jurors were requested to make affidavit, but under the advice of their counsel they declined unless required by the court.

The motion for a new trial set forth that the verdict was the result of an agreement between certain of the

225 U. S.

Opinion of the Court.

jurors who believed all of the defendants should be convicted and certain jurors who believed that all of the defendants should be acquitted, by which agreement the acquittal of Benson was exchanged for the conviction of Hyde and the conviction of Schneider for the acquittal of Dimond. And this was brought about, it is contended and argued, as the result of what "under the circumstances amounted to coercion by the court."

There is nothing in the record to justify the contention. It is true the trial was a long one and that the jury were not allowed to separate. Neither fact is unusual in criminal trials; the first is often necessary, the second often expedient, and contributes to an impartial judgment for and against defendants. It is true that the jury was in consultation for three days and nights without agreement, but the case was unusual in its issues and evidence and the detailed attention that was required.

It well might be that jurors should not see the exact bearing of the evidence as it affected particular defendants until the final instructions of the court, which we have set out and about which counsel were consulted. The court took care to say to the jury that the law would not recognize a coerced verdict, and that it was not the court's intention to unduly prolong their deliberations, and if after another effort "they could not conscientiously and freely agree upon a verdict they would be discharged." It is hard to believe that with that admonition yet in their ears they bartered their convictions, with that promise expressly made to them, they were coerced by a threat of confinement to acquit those who they were convinced were guilty or convict those who they were convinced were innocent.

But, even conceiving such possibility, we think the court rightly ruled. It was within the issues of the case to convict some of the defendants and acquit others, and we think the rule expressed in *Wright v. Illinois & Miss.*

HOLMES, LURTON, HUGHES and LAMAR, JJ., dissenting. 225 U. S.

*Tel. Co.*, 20 Iowa, 195, and *Gottlieb Bros. v. Jasper & Co.*, 27 Kansas, 770, should apply, that the testimony of jurors should not be received to show matters which essentially inhere in the verdict itself and necessarily depend upon the testimony of the jurors and can receive no corroboration.

*Judgment affirmed.*

MR. JUSTICE HOLMES, with whom concurred MR. JUSTICE LURTON, MR. JUSTICE HUGHES and MR. JUSTICE LAMAR, dissenting.

This is an indictment under Rev. Stat. § 5440, amended, act of May 17, 1879, c. 8, 21 Stat. 4, for a conspiracy to defraud the United States. The petitioners were tried and convicted in the District of Columbia, the conviction was affirmed by the Court of Appeals, 35 App. D. C. 451, and thereupon a writ of certiorari was granted by this court. The scheme was to obtain by fraudulent devices from the States of California and Oregon school lands lying within forest reserves, to exchange them for public lands of the United States open to selection, and then to sell the lands so obtained. Hyde and Schneider were in California and never were actually in the District in aid of the conspiracy, but overt acts are alleged to have been done there to effect the objects in view. Most of these acts are innocent, taken by themselves, consisting mainly of the entry of appearance by Hyde's lawyer in the matter of different selections, the filing of papers concerning them, and letters urging speed. Hyde is alleged to have caused some documents affecting the same to be transmitted from California to the Commissioner at Washington, and in the last six counts payments to employes in the Land Office are alleged to have been made with corrupt purpose and in aid of the plan by a person who was included in the indictment as a conspirator, but whom the jury did not convict.

225 U. S. HOLMES, LURTON, HUGHES and LAMAR, JJ., dissenting.

The court instructed the jury that if the defendants agreed to accomplish their purpose by having any of the alleged overt acts done in the District of Columbia, and any of those acts were done there, the conspiracy was in the District, whether the defendants were there or not. The defendants excepted to this instruction, as well as to many others.

I have said enough to show that there was more than one question in the case, but as the first and also the most important one is whether the court had jurisdiction of the alleged offence, I shall confine myself to that.

The conspiracy was continuous in its nature and is averred to have been so. *United States v. Kissel*, 218 U. S. 601. Therefore, wherever it was formed, it might have been continued in the District of Columbia, as, for instance, if the conspirators had met there for the purposes of their scheme. Moreover, in order to narrow the question, I will assume that, so far as the statute of limitations is concerned, an overt act done anywhere with the express or implied consent of conspirators would show the conspiracy to be continuing between the parties so consenting, and leave them open to prosecution for three years from that date. But it does not follow that an overt act draws the conspiracy to wherever such overt act may be done, and whether it does so or not is the question before us now.

In order to answer this question it is not enough to say that as the overt act was one that was contemplated by the conspirators it is treated as the act of them all, and that this is equivalent to saying that they were constructively present. That would be passing *a dicto secundum quid ad dictum simpliciter*. They are chargeable there for the act, but it does not follow that they were there to other intents. They are shown not to have been by the fact that they could not be treated as fugitives from justice even in respect of that very act, when and although that act was itself a crime. *Hyatt v. Corkran*, 188 U. S. 691, 712.

HOLMES, LURTON, HUGHES and LAMAR, JJ., dissenting. 225 U. S.

To speak of constructive presence is to use the language of fiction, and so to hinder precise analysis. When a man is said to be constructively present where the consequences of an act done elsewhere are felt, it is meant that for some special purpose he will be treated as he would have been treated if he had been present, although he was not. For instance, if a man acting in one State sets forces in motion that kill a man in another, or produces or induces some consequence in that other that it regards as very hurtful and wishes to prevent, the latter State is very likely to say that if it can catch him it will punish him, although he was not subject to its laws when he did the act. *Strassheim v. Daily*, 221 U. S. 280, 285. But as States usually confine their threats to those within the jurisdiction at the time of the act, *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 356, the symmetry of general theory is preserved by saying that the offender was constructively present in the case supposed. *Burton v. United States*, 202 U. S. 344, 389. We must not forget facts, however. He was not present in fact, and in theory of law he was present only so far as to be charged with the act.

Obviously the use of this fiction or form of words must not be pushed to such a point in the administration of the national law as to transgress the requirement of the Constitution that the trial of crimes shall be held in the State and district where the crimes shall have been committed. Art. III, § 2, Cl. 3. Amendments, Art. VI. With the country extending from ocean to ocean this requirement is even more important now than it was a hundred years ago, and must be enforced in letter and spirit if we are to make impossible hardships amounting to grievous wrongs. In the case of conspiracy the danger is conspicuously brought out. Every overt act done in aid of it of course is attributed to the conspirators, and if that means that the conspiracy is present as such wherever any

225 U. S. HOLMES, LURTON, HUGHES and LAMAR, JJ., dissenting.

overt act is done, it might be at the choice of the Government to prosecute in any one of twenty States in none of which the conspirators had been. And as wherever two or more have united for the commission of a crime there is a conspiracy, the opening to oppression thus made is very wide indeed. It is even wider if success should be held not to merge the conspiracy in the crime intended and achieved. I think it unnecessary to dwell on oppressions that I believe have been practised or on the constitutional history impressively adduced by Mr. Worthington to show that this is one of the wrongs that our forefathers meant to prevent.

No distinction can be taken based on the gravity of the overt act, or the fact that it was contemplated, or that it is important for the accomplishment of the substantive evil that the conspiracy aims to bring about and the law seeks to prevent. That would be carrying over the law of attempts to where it does not belong. Although both are adjective crimes, a conspiracy is not an attempt, even under Rev. Stat. § 5440, which requires an overt act. When I first read that section I thought that it was an indefinite enlargement of the law of attempts. But reflection and the decisions both convinced me that I was wrong. The statute simply did away with a doubt as to the requirements of the common law. *Rex v. Spragg*, 2 Burr. 993, 999; Roscoe, Crim. Ev. 6th ed. 381, 382. An attempt, in the strictest sense, is an act expected to bring about a substantive wrong by the forces of nature. With it is classed the kindred offence where the act and the natural conditions present or supposed to be present are not enough to do the harm without a further act, but where it is so near to the result that if coupled with an intent to produce that result, the danger is very great. *Swift & Co. v. United States*, 196 U. S. 375, 396. But combination, intention and overt act may all be present without amounting to a criminal attempt—as if all that

HOLMES, LURTON, HUGHES and LAMAR, JJ., dissenting. 225 U. S.

were done should be an agreement to murder a man fifty miles away and the purchase of a pistol for the purpose. There must be dangerous proximity to success. But when that exists the overt act is the essence of the offence. On the other hand, the essence of the conspiracy is being combined for an unlawful purpose—and if an overt act is required, it does not matter how remote the act may be from accomplishing the purpose, if done to effect it; that is, I suppose, in furtherance of it in any degree. In this case the statute treats the conspiracy as the crime and the indictment follows the statute.

The cases in this court have agreed that the statute has not made the overt act a part of the crime, which still remains the conspiracy alone. By the same reasoning the overt act gives no ground for the application of Rev. Stat. § 731, creating a double jurisdiction when an offence against the United States is begun in one district and completed in another. The act is no part of the conspiracy even if it is an element in some other crime, as is stated in so many words in *Hyde v. Shine*, 199 U. S. 62, 76, quoting the well known statement in *United States v. Britton*, 108 U. S. 199, 204, that the statutory requirement merely affords a *locus penitentiæ*. *Delay v. United States*, 152 U. S. 539, 547. See also *United States v. Hirsch*, 100 U. S. 33. *Pettibone v. United States*, 148 U. S. 197, 202. *Bannon v. United States*, 156 U. S. 464, 469. The overt act is simply evidence that the conspiracy has passed beyond words and is on foot when the act is done. As a test of actuality it is made a condition to punishment, but it is no more a part of the crime than it was at common law, where it was customary to allege such an act; or than is the fact that the statute of limitations has not run.

I can think of no other case in which it would be argued that an act constituting no part of the crime charged draws jurisdiction to the place where it is done. Even when the act is the substance of a felony the history of the

225 U. S. HOLMES, LURTON, HUGHES and LAMAR, JJ., dissenting.

law shows that the courts only slowly and with hesitation came to the admission that a man, although within the jurisdiction, could be a principal when he was not present at the accomplishment of the crime. Y. B. 7 Henry, VII, 18, pl. 10. The distinction between principal and accessory before the fact is a late surviving expression of the doubt. 4 Bl. Com. 36, 37. When the accessory is in a different jurisdiction it has been held that he could not be convicted as such in the place of the crime, even in modern cases. *State v. Moore*, 6 Foster, N. H. 448, Bish. Crim. Law, 8th ed., § 111. It would be an amazing extension of even the broadest form of fiction if it should be held that an otherwise innocent overt act done in one State drew to itself a conspiracy in another State to defraud people in the latter, even though the first State would punish a conspiracy to commit a fraud beyond its own boundaries. Of course in the present case the conspiracy as well as the overt act was within the United States, but the case that I have supposed of different jurisdictions is a perfect test of where the crime was committed. If a conspiracy exists wherever an overt act is done in aid of it, the act ought to give jurisdiction over conspirators in a foreign State, if later they should be caught in the place where the act was done.

The defendants were in California and never left the State, so far as this case is concerned. The fraud, assuming as I do for the purposes of decision that there was one, was to get land from the United States there and elsewhere on the Pacific Coast. If successful it would be punished there. The crime with which the defendants are charged is having been engaged in or members of a conspiracy, nothing else; no act, other than what is implied as necessary to signify their understanding to each other. It is punished only to create a further obstacle to the ultimate crime in California. The defendants never were members of a conspiracy within a thousand miles of the District



HOLMES, LURTON, HUGHES and LAMAR, JJ., dissenting. 225 U. S.

in fact. Yet if a lawyer entered his appearance there in a case before the Land Department, and the defendants directed it and expected to profit by it in carrying out their plans, it is said that we should feign that they were here in order to warrant their being taken across the continent and tried in this place. The Constitution is not to be satisfied with a fiction. When a man causes an unlawful act, as in the case of a prohibited use of the mails, it needs no fiction to say that the crime is committed at the place of the act, wherever the man may be. *Re Palliser*, 136 U. S. 256. But when the offense consists solely in a relation to other men with a certain intent, it is pure fiction to say that the relation is maintained and present in the case supposed. If the Government, instead of prosecuting for the substantive offence, charges only conspiracy to commit it, trial ought to be where the conspiracy exists in fact.

The effect of an overt act upon the statute of limitations is consistent with what I have said. If an overt act is done with the consent of the conspirators, and to effect their end, the reason why the statute begins to run afresh is not that a new conspiracy is made or the old one renewed by the act, but that the facts supposed show conclusively that the conspiracy is continuing in life. So long as it does so it cannot be barred, although the earlier years of it may be.

To avoid misapprehension the distinction should be noted between acts done in aid of a conspiracy and acts that constitute and call it into being. If a conspiracy should be formed by letters between men living in California, Louisiana and Massachusetts, who never left their several States, nothing that I have said would disparage the right of the Government to indict them where in contemplation of law the agreement was made.

It is said that the conspiracy may be a secret one; but that cannot affect the tests of jurisdiction. The overt act may amount to evidence not only of its existence but of its place. But to treat overt acts as evidence is one

225 U. S. HOLMES, LURTON, HUGHES and LAMAR, JJ., dissenting.

thing; it is quite another to treat any overt act as sufficient in itself to give jurisdiction, although the conspiracy exists only in another place.

The intimations that are to be found, opposed to the view that I take, appear to have been induced by the confusion that I have tried to dispel, and to assume that an overt act creates jurisdiction over a conspiracy on the same ground that causing a death may give jurisdiction in murder; or, perhaps, in *The King v. Brisac*, 4 East, 164, 171, to proceed on the dangerous analogy of treasonable conspiracies to levy war or compass the death of the sovereign. The dictum in that case gains no new force from the repetition by text writers. It is one of the misfortunes of the law that ideas become encysted in phrases and thereafter for a long time cease to provoke further analysis. On the other hand, if overt acts had been regarded as founding jurisdiction, the petitioners could not have been discharged in *Tinsley v. Treat*, 205 U. S. 20, where overt acts of other conspirators within the jurisdiction were alleged and not denied. Although the point was not mentioned in the opinion, it was argued and was not overlooked. At least in the absence of clear statutory words I am of opinion that logic and the policy and general intent of the Constitution agree in refusing to extend the fiction of constructive presence to a case like this. I think that the true view still is that of *Reg. v. Best*, 1 Salk. 174, "The *venue* must be where the conspiracy was, not where the result of the conspiracy is put in execution," quoted as correct in principle in Markby's edition of Roscoe's Criminal Evidence, 6th ed., 391; and that to decide otherwise is to overrule not only the often expressed and settled understanding but the express decisions of this court.

MR. JUSTICE LURTON, MR. JUSTICE HUGHES and MR. JUSTICE LAMAR concur in this dissent.